

M&I Only  
Contract No. 14-06-200-8901D

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES  
AND  
CITY OF FRESNO  
PROVIDING FOR PROJECT WATER SERVICE  
FROM FRIANT DIVISION AND  
FOR FACILITIES REPAYMENT

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5 CONTRACT BETWEEN THE UNITED STATES  
6 AND  
7 CITY OF FRESNO  
8 PROVIDING FOR PROJECT WATER SERVICE FROM  
9 FRIANT DIVISION AND  
10 FACILITIES REPAYMENT

11 THIS CONTRACT, made this 22nd day of December, 2010, is entered  
12 into pursuant to the Act of June 17, 1902, (32 Stat. 388), and acts amendatory or supplementary  
13 thereto, including but not limited to: the Acts of August 26, 1937 (50 Stat. 844), as amended and  
14 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, June 21, 1963 (77  
15 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat. 3050), as amended, Title  
16 XXXIV of the Act of October 30, 1992 (106 Stat. 4706), and Title X, Subtitle A, of the Act of  
17 March 30, 2009 (123 Stat. 1349), also referred to as the San Joaquin River Restoration  
18 Settlement Act hereinafter referred to as SJRRSA, all collectively hereinafter referred to as  
19 Federal Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred  
20 to as the United States and the CITY OF FRESNO, hereinafter referred to as the Contractor, a  
21 public agency of the State of California, duly organized, existing, and acting pursuant to the laws  
22 thereof, with its principal place of business in California;

23 WITNESSETH, That

24 EXPLANATORY RECITALS

25 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
26 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood

27 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and  
28 restoration, generation and distribution of electric energy, salinity control, navigation and other  
29 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and  
30 the San Joaquin River and their tributaries; and

31 [2<sup>nd</sup>] WHEREAS, the United States constructed Friant Dam (thereby creating Millerton  
32 Lake) and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant  
33 Division Facilities, which will be used in part for the furnishing of water to the Contractor  
34 pursuant to the terms of this Contract; and

35 [3<sup>rd</sup>] WHEREAS, the United States and the Contractor entered into Contract Number  
36 14-06-200-8901 which established terms for the delivery to the Contractor of Project Water from  
37 the Friant Division from March 1, 1966 through February 28, 2006; and

38 [4<sup>th</sup>] WHEREAS, the Contractor and the United States have, pursuant to subsection  
39 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into a  
40 Binding Agreement, identified as Binding Agreement No. 14-06-200-8901-BA, which sets out  
41 the terms pursuant to which the Contractor agreed to renew the existing contract before its  
42 expiration date after completion of the programmatic environmental impact statement, and  
43 subsequently entered into a long-term renewal contract identified as Contract Number  
44 14-06-200-8901-LTR1, which provided for continued water service to Contractor through  
45 February 28, 2045, and is herein referred to as the "Existing Contract"; and

46 [5<sup>th</sup>] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the  
47 United States has acquired water rights and other rights to the flows of the San Joaquin River,  
48 including without limitation the permits issued as the result of Decision 935 by the California

49 State Water Resource Control Board and the contracts described in subdivision (n) of Article 3  
50 of this Contract, pursuant to which the Contracting Officer develops, diverts, stores and delivers  
51 Project Water stored or flowing through Millerton Lake in accordance with State and Federal law  
52 for the benefit of Project Contractors in the Friant Division and for other specified Project  
53 purposes; and

54 [6<sup>th</sup>] WHEREAS, the water supplied to the Contractor pursuant to this Contract is  
55 Project Water developed through the exercise of the rights described in the fifth (5<sup>th</sup>) Explanatory  
56 Recital of this Contract; and

57 [7<sup>th</sup>] WHEREAS, as a result of litigation entitled “Natural Resources Defense Council,  
58 et al. v Kirk Rogers, et al.” No. CIV-S-88-1658LLK/GGH, certain contractors from the Friant  
59 Division entered into a Stipulation of Settlement dated September 13, 2006, (the “Settlement”),  
60 which settlement prescribes a Restoration Goal and a Water Management Goal and which  
61 Settlement was subsequently confirmed and implemented through the SJRRSA; and

62 [8<sup>th</sup>] WHEREAS, the SJRRSA authorizes and directs the Secretary to convert the  
63 Existing Contract to a repayment contract under clause (1) in the proviso to the first sentence of  
64 subsection (c) (hereinafter referred to as subsection (c)(1)) of Section 9 of the Act of August 4,  
65 1939, no later than December 31, 2010, and further directs that such contract shall require the  
66 repayment of the Contractor’s allocated share of construction costs in lump sum payment by  
67 January 31, 2014, which funds will in turn be made available for implementation of the  
68 Settlement and SJRRSA, and which costs otherwise would have been payable through annual  
69 water rates, with full repayment by 2030; and

70 [9<sup>th</sup>] WHEREAS, such repayment of costs will assist the United States with  
71 implementation of actions required under the Settlement and the SJRRSA and provide the  
72 Contractor the benefits provided in Section 10010 of the SJRRSA; and

73 [10<sup>th</sup>] WHEREAS, Section 2 of the Act of June 21, 1963 (1963 Act) provides that if the  
74 other party to any long-term contract for municipal, domestic, or industrial water supply so  
75 requests, The Secretary shall provide in any contract entered into under subsection (c)(1) of  
76 Section 9 of the Act of August 4, 1939 (repayment contract) that such party to the contract  
77 “shall, during the term of the contract and any renewal thereof and subject to fulfillment of all  
78 obligations thereunder, have a first right for the purposes stated in the contract (to which the  
79 holders of any other type of contract for municipal, domestic, or industrial water supply shall be  
80 subordinate) to a stated share or quantity of the project’s water supply available for municipal,  
81 domestic, or industrial use”; and

82 [11<sup>th</sup>] Omitted; and

83 [12<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the  
84 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for  
85 reasonable and beneficial use and/or has demonstrated projected future demand for water use  
86 such that the Contractor has the capability and expects to utilize fully for reasonable and  
87 beneficial use the quantity of Project Water to be made available to it pursuant to this Contract;  
88 and

89 [13<sup>th</sup>] WHEREAS, water obtained from the Central Valley Project has been relied upon  
90 by urban and agricultural areas within California for more than fifty (50) years and is considered  
91 by the Contractor as an essential portion of its water supply; and

92           **[14<sup>th</sup>] WHEREAS, the economies of regions within the Central Valley Project,**  
93 **including the Contractor's, depend upon the continued availability of water, including water**  
94 **service from the Central Valley Project; and**

95           **[15<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and**  
96 **partnerships to pursue measures to improve water supply, water quality, and reliability of the**  
97 **Project for all Project purposes; and**

98           **[16<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to**  
99 **provide for reliable Project Water supplies; to control costs of those supplies; to achieve**  
100 **repayment of the Central Valley Project as required by law; to guard reasonably against Project**  
101 **Water shortages; to achieve a reasonable balance among competing demands for use of Project**  
102 **Water; and to comply with all applicable environmental statutes, all consistent with the legal**  
103 **obligations of the United States relative to the Central Valley Project; and**

104           **[17<sup>th</sup>] WHEREAS, any time during the Year the Contracting Officer determines that a**  
105 **need exists to evacuate water from Millerton Lake in order to prevent or minimize spill or to**  
106 **meet flood control criteria (currently referred to as "uncontrolled season"), taking into**  
107 **consideration, among other things, anticipated upstream reservoir operations and the most**  
108 **probable forecast of snowmelt and runoff projections for the upper San Joaquin River, Friant**  
109 **Division Project Contractors utilize a portion of their undependable Class 2 Water in their**  
110 **service areas to, among other things, assist in the management and alleviation of groundwater**  
111 **overdraft in the Friant Division service area, provide opportunities for restoration of the San**  
112 **Joaquin River below Friant Dam, minimize flooding along the San Joaquin River, encourage**  
113 **optimal water management, and maximize the reasonable and beneficial use of the water; and**

114 [18<sup>th</sup>] WHEREAS, the parties desire and intend that this Contract not provide a  
115 disincentive to the Friant Division Project Contractors continuing to carry out the beneficial  
116 activities set out in the Explanatory Recital immediately above; and

117 [19<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all  
118 of its obligations under the Existing Contract; and

119 [20<sup>th</sup>] WHEREAS, this Contract allows the Contractor to retain a sustainable water  
120 supply, and provides greater certainty regarding the cost and long-term integrity of its Central  
121 Valley Project water supplies.

122 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein  
123 contained, it is hereby mutually agreed by the parties hereto as follows:

124 DEFINITIONS

125 1. When used herein, unless otherwise distinctly expressed or manifestly  
126 incompatible with the intent of the parties as expressed in this Contract, the term:

127 (a) "Additional Capital Obligation" shall mean any additional construction  
128 costs or other capitalized costs incurred after the effective date of this Contract or not reflected in  
129 the Existing Capital Obligation as provided in Section 10010(a)(3)(B) of the SJRRSA and any  
130 amounts payable by Contractor as determined through the final adjustment described and  
131 required by Section 10010(b) of the SJRRSA;

132 (b) "Calendar Year" shall mean the period January 1 through December 31,  
133 both dates inclusive;

134                   (c)     “Charges” shall mean the payments required by Federal Reclamation law  
135 in addition to the Rates and Tiered Pricing Components specified in this Contract as determined  
136 annually by the Contracting Officer pursuant to this Contract and consistent with the SJRRSA;

137                   (d)     “Class 1 Water” shall mean that supply of water stored in or flowing  
138 through Millerton Lake which, subject to the contingencies hereinafter described in Articles 3,  
139 12, and 13 of this Contract, will be available for delivery from Millerton Lake and the  
140 Friant-Kern and Madera Canals as a dependable water supply during each Year;

141                   (e)     “Class 2 Water” shall mean that supply of water which can be made  
142 available subject to the contingencies hereinafter described in Articles 3, 12, and 13 of this  
143 Contract for delivery from Millerton Lake and the Friant-Kern and Madera Canals in addition to  
144 the supply of Class 1 Water. Because of its uncertainty as to availability and time of occurrence,  
145 such water will be undependable in character and will be furnished only if, as, and when it can be  
146 made available as determined by the Contracting Officer;

147                   (f)     “Condition of Shortage” shall mean a condition respecting the Project  
148 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the  
149 Contract Total;

150                   (g)     “Contracting Officer” shall mean the Secretary of the Interior’s duly  
151 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law  
152 or regulation;

153                   (h)     “Contract Total” shall mean the maximum amount of Class 1 Water plus  
154 the maximum amount of Class 2 Water specified in subdivision (a) of Article 3 of this Contract  
155 and is the stated share or quantity of the Project’s available water supply to which the Contractor

156 shall have a first right, in accordance with the 1963 Act and the terms of this Contract, upon the  
157 Contractor's complete payment of the Repayment Obligation, notwithstanding any Additional  
158 Capital Obligation that may later be established;

159 (i) "Contractor's Service Area" shall mean the area to which the Contractor is  
160 permitted to provide Project Water under this Contract as described in Exhibit "A" attached  
161 hereto, which may be modified from time to time in accordance with Article 36 of this Contract  
162 without amendment of this Contract;

163 (j) "CVPIA" shall mean the Central Valley Project Improvement Act, Title  
164 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

165 (k) Omitted;

166 (l) Omitted;

167 (m) "Existing Capital Obligation" shall mean the remaining amount of  
168 construction costs of the Contractor identified in the Central Valley Project Irrigation Water  
169 Rates and/or Municipal and Industrial Water Rates, respectively, dated January 25, 2007, as  
170 adjusted to reflect payments not reflected in such schedule, pursuant to Section 10010(a)(3)(A)  
171 of the SJRRSA. The Contracting Officer has computed the Existing Capital Obligation in a  
172 manner consistent with the SJRRSA and such amount is set forth in Exhibits "C-1", incorporated  
173 herein by reference;

174 (n) "Financing Costs", for purposes of computing the reduction of certain  
175 charges as specified in subdivision (c) of Article 7 of this Contract, shall mean the difference  
176 between the net present value of the Existing Capital Obligation discounted using the full

177 Treasury rate and the Existing Capital Obligation discounted using one-half the Treasury rate, as  
178 set forth in Section 10010(d)(3) of the SJRRA;

179 (o) "Full Cost Rate" shall mean an annual rate as determined by the  
180 Contracting Officer that shall amortize the expenditures for construction properly allocable to the  
181 Project irrigation or M&I functions, as appropriate, of facilities in service including all O&M  
182 deficits funded, less payments, over such periods as may be required under Federal Reclamation  
183 law or applicable contract provisions. Interest will accrue on both the construction expenditures  
184 and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the  
185 date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated  
186 in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes  
187 actual operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules  
188 and Regulations for the RRA;

189 (p) Omitted;

190 (q) Omitted;

191 (r) "Irrigation Water" shall mean water made available from the Project that  
192 is used primarily in the production of agricultural crops or livestock, including domestic use  
193 incidental thereto, and watering of livestock;

194 (s) Omitted;

195 (t) "Long Term Historic Average" shall mean the average of the final forecast  
196 of Water Made Available to the Contractor pursuant to this Contract and the contracts referenced  
197 in the third (3<sup>rd</sup>) and fourth (4<sup>th</sup>) Explanatory Recitals of this Contract;

198                    (u)    **“Municipal and Industrial (M&I) Water” shall mean Water Made**  
199    Available from the Project other than Irrigation Water made available to the Contractor. M&I  
200    Water shall include water used for human use and purposes such as the watering of landscaping  
201    or pasture for animals (e.g., horses) which are kept for personal enjoyment or water delivered to  
202    land holdings operated in units of less than five (5) acres unless the Contractor establishes to the  
203    satisfaction of the Contracting Officer that the use of water delivered to any such landholding is a  
204    use described in subdivision (r) of this Article of this Contract;

205                    (v)    **“Municipal & Industrial (M&I) Full Cost Water Rate” shall mean the Full**  
206    Cost Rate applicable to the delivery of M&I Water;

207                    (w)    **“Operation and Maintenance” or “O&M” shall mean normal and**  
208    reasonable care, control, operation, repair, replacement (other than Capital replacement), and  
209    maintenance of Project facilities;

210                    (x)    **“Operating Non-Federal Entity” shall mean the Friant Water Authority, or**  
211    its successor, a Non-Federal entity, which has the obligation to operate and maintain all or a  
212    portion of the Friant Division Facilities pursuant to an agreement with the United States and  
213    which may have funding obligations with respect thereto;

214                    (y)    **Omitted;**

215                    (z)    **“Project” shall mean the Central Valley Project owned by the United**  
216    States and managed by the Department of the Interior, Bureau of Reclamation;

217                    (aa)   **“Project Contractors” shall mean all parties who have a long-term water**  
218    service contract or repayment contract for Project Water from the Project with the United States  
219    pursuant to Federal Reclamation law;

220 (bb) "Project Water" shall mean all water that is developed, diverted, stored, or  
221 delivered by the Secretary in accordance with the statutes authorizing the Project and in  
222 accordance with the terms and conditions of water rights acquired pursuant to California law;

223 (cc) "Rates" shall mean the payments for O&M costs as determined annually  
224 by the Contracting Officer in accordance with the then-existing applicable water ratesetting  
225 policies for the Project, as described in subdivision (a) of Article 7 of this Contract and  
226 illustrated in Exhibit "B", attached hereto;

227 (dd) "Recovered Water Account" shall mean the program, as defined in the  
228 Settlement, to make water available to all of the Friant Division Project Contractors who provide  
229 water to meet interim flows or restoration flows for the purpose of reducing or avoiding the  
230 impact of the interim flows and restoration flows on such contractors;

231 (ee) "Repayment Obligation", as provided in subdivision (a)(2)(A) of Article 7  
232 of this Contract, shall be the Existing Capital Obligation, as defined herein, discounted by  
233 one-half of the Treasury rate and computed consistent with the provisions of Section  
234 10010(a)(3)(A) of the SJRRSA to be paid by January 31, 2014;

235 (ff) "Secretary" shall mean the Secretary of the Interior, a duly appointed  
236 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
237 through any agency of the Department of the Interior;

238 (gg) "Settlement" shall mean the Stipulation of Settlement dated September 13,  
239 2006, the Order Approving Stipulation of Settlement, and the Judgment and further orders issued  
240 by the Court pursuant to the terms and conditions of the Settlement in Natural Resources  
241 Defense Council, et al. v. Rodgers, et al., No. CIV-S-88-1658 LLJ/GGH;

242 (hh) "Tiered Pricing Component" shall be the incremental amount to be paid  
243 for each acre-foot of Water Delivered as described in subdivision (l)(1) of Article 7 of this  
244 Contract;

245 (ii) "Water Delivered" or "Delivered Water" shall mean Project Water  
246 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting  
247 Officer;

248 (jj) "Water Made Available" shall mean the estimated amount of Project  
249 Water that can be delivered to the Contractor for the upcoming Year as declared by the  
250 Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

251 (kk) "Water Management Goal" shall mean the goal of the Settlement to  
252 reduce or avoid adverse water supply impacts to all the Friant Division Project Contractors that  
253 may result from the interim flows and restoration flows provided for in the Settlement;

254 (ll) "Water Scheduled" shall mean Project Water made available to the  
255 Contractor for which times and quantities for delivery have been established by the Contractor  
256 and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

257 (mm) "Year" shall mean the period from and including March 1 of each  
258 Calendar Year through the last day of February of the following Calendar Year.

259 EFFECTIVE DATE OF CONTRACT

260 2. (a) This Contract shall become effective on the date first hereinabove written  
261 and shall continue so long as the Contractor is making the payment required herein and paying  
262 any other amounts owing under this Contract and applicable law, unless it is terminated by the  
263 Contracting Officer by reason of a material uncured breach by the Contractor; Provided, That the

264 Contracting Officer shall not seek to terminate this Contract by reason of an asserted material  
265 uncured breach by the Contractor unless it has first provided at least sixty (60) days written  
266 notice of the asserted breach to the Contractor and the Contractor has failed to cure such breach  
267 (or to diligently commence curative actions satisfactory to the Contracting Officer for a breach  
268 that cannot be fully cured within sixty (60) days) within the sixty (60)-day notice period;  
269 Provided further, That this Contract may be terminated at any time by mutual consent of the  
270 parties hereto.

271 (b) Upon complete payment of the Repayment Obligation by the Contractor,  
272 and notwithstanding any Additional Capital Obligation that may later be established, the Tiered  
273 Pricing Component as that term is utilized in this Contract and Full Cost pricing provisions of  
274 Federal Reclamation law, and subdivisions (k), (l), (o) through (q), (s), and (v) of Article 1,  
275 subdivision (f) of Article 6, subdivisions (a)(2)(A), (l)(1), (l)(2), and (l)(3) of Article 7, Article  
276 14, subdivision (a) of Article 18, and Article 25, all of this Contract, shall no longer be  
277 applicable to the Contractor. Upon complete payment of the Repayment Obligation by the  
278 Contractor, and notwithstanding any Additional Capital Obligation that may later be established,  
279 the terms of this Contract shall be as provided in the restated contract attached hereto as Exhibit  
280 "E", which has been prepared solely as a matter of administrative convenience. Exhibit "E"  
281 makes no substantive revisions other than those required by this subdivision of this Article of  
282 this Contract. Accordingly, upon complete payment of the Repayment Obligation by the  
283 Contractor, and notwithstanding any Additional Capital Obligation that may later be established,  
284 the parties shall refer to Exhibit "E" as their entire agreement under this Contract.

285 (c) This Contract supersedes in its entirety and is intended to replace in full  
286 the Existing Contract; Provided, That if this Contract is terminated or determined to be invalid or  
287 unenforceable for any reason other than a material uncured breach of this Contract by the  
288 Contractor, the Existing Contract shall not be superseded and shall be in full force and effect.

289 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

290 3. (a) During each Year, consistent with all applicable State water rights,  
291 permits, and licenses, Federal law, the Settlement including the SJRRSA, and subject to the  
292 provisions set forth in Articles 12 and 13 of this Contract, the Contracting Officer shall make  
293 available for delivery to the Contractor from the Project 60,000 acre-feet of Class 1 Water for  
294 M&I purposes. The quantity of Water Delivered to the Contractor in accordance with this  
295 subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this  
296 Contract.

297 (b) Upon complete payment of the Repayment Obligation by the Contractor,  
298 and notwithstanding any Additional Capital Obligation that may later be established, the  
299 Contractor shall have a first right to a stated share or quantity of the Project's water supply  
300 available for M&I uses in accordance with the 1963 Act and the terms of this Contract which  
301 right shall not be disturbed so long as the Contractor fulfills all of its obligations hereunder. The  
302 quantity of water made available for delivery in any given Year shall remain subject to the terms  
303 and conditions of subdivision (a) of this Article of this Contract.

304 (c) The Contractor shall utilize the Project Water in accordance with all  
305 applicable legal requirements.

306                   (d)     The Contractor shall make reasonable and beneficial use of all Project  
307     Water or other water furnished pursuant to this Contract. Groundwater recharge programs,  
308     groundwater banking programs, surface water storage programs, and other similar programs  
309     utilizing Project Water or other water furnished pursuant to this Contract conducted within the  
310     Contractor's Service Area which are consistent with applicable State law and result in use  
311     consistent with applicable Federal Reclamation law will be allowed; Provided, That any direct  
312     recharge program(s) is (are) described in the Contractor's Water Conservation Plan submitted  
313     pursuant to Article 27 of this Contract; Provided further, That such Water Conservation Plan  
314     demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a  
315     long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such  
316     uses and in compliance with Federal Reclamation law. Groundwater recharge programs,  
317     groundwater banking programs, surface water storage programs, and other similar programs  
318     utilizing Project Water or other water furnished pursuant to this Contract conducted outside the  
319     Contractor's Service Area may be permitted upon written approval of the Contracting Officer,  
320     which approval will be based upon environmental documentation, Project Water rights, and  
321     Project operational concerns. The Contracting Officer will address such concerns in regulations,  
322     policies, or guidelines.

323                   (e)     The Contractor, through this Contract, shall comply with requirements  
324     applicable to the Contractor in biological opinion(s) prepared as a result of the consultation  
325     regarding the execution of the Existing Contract undertaken pursuant to Section 7 of the  
326     Endangered Species Act of 1973, as amended, as well as the requirements of any other biological  
327     opinions applicable to Project Water delivery under this Contract, that are within the

328 Contractor's legal authority to implement. The Existing Contract, which evidences in excess of  
329 44 years of diversions for M&I purposes of the quantities of water provided in subdivisions (a)  
330 of Article 3 of this Contract, will be considered in developing an appropriate baseline for the  
331 biological assessment(s) prepared pursuant to the ESA, and any other needed environmental  
332 review. The Contractor shall comply with the limitations or requirements imposed by  
333 environmental documentation applicable to the Contractor and within its legal authority to  
334 implement regarding specific activities. Nothing herein shall be construed to prevent the  
335 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with  
336 respect to any biological opinion or other environmental documentation referred to in this Article  
337 of this Contract.

338 (f) Subject to subdivisions (l) and (n) of this Article of this Contract,  
339 following the declaration of Water Made Available under Article 4 of this Contract, the  
340 Contracting Officer will make a determination whether Project Water, or other water available to  
341 the Project, can be made available to the Contractor in addition to the Contract Total in this  
342 Article of this Contract during the Year without adversely impacting the Project or other Project  
343 Contractors and consistent with the Secretary's legal obligations. At the request of the  
344 Contractor, the Contracting Officer will consult with the Contractor prior to making such a  
345 determination. Subject to subdivisions (l) and (n) of this Article of this Contract, if the  
346 Contracting Officer determines that Project Water, or other water available to the Project, can be  
347 made available to the Contractor, the Contracting Officer will announce the availability of such  
348 water and shall so notify the Contractor as soon as practical. The Contracting Officer will  
349 thereafter meet with the Contractor and other Project Contractors capable of taking such water to

350 determine the most equitable and efficient allocation of such water. If the Contractor requests  
351 the delivery of any quantity of such water, the Contracting Officer shall make such water  
352 available to the Contractor in accordance with applicable statutes, regulations, guidelines, and  
353 policies.

354 (g) The Contractor may request permission to reschedule for use during the  
355 subsequent Year some or all of the Water Made Available to the Contractor during the current  
356 Year referred to as "carryover." The Contractor may request permission to use during the  
357 current Year a quantity of Project Water which may be made available by the United States to  
358 the Contractor during the subsequent Year referred to as "pre-use." The Contracting Officer's  
359 written approval may permit such uses in accordance with applicable statutes, regulations,  
360 guidelines, and policies.

361 (h) The Contractor's right pursuant to Federal Reclamation law and applicable  
362 State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract  
363 shall not be disturbed so long as the Contractor shall fulfill all of its obligations under this  
364 Contract. Nothing in the preceding sentence shall affect the Contracting Officer's ability to  
365 impose shortages under Article 12 or subdivision (b) of Article 13 of this Contract.

366 (i) Project Water furnished to the Contractor pursuant to this Contract may be  
367 delivered for purposes other than those described in subdivisions (r) and (u) of Article 1 of this  
368 Contract upon written approval by the Contracting Officer in accordance with the terms and  
369 conditions of such approval.

370 (j) The Contracting Officer shall make reasonable efforts to protect the water  
371 rights and other rights described in the fifth (5th) Explanatory Recital of this Contract and to

372 provide the water available under this Contract. The Contracting Officer shall not object to  
373 participation by the Contractor, in the capacity and to the extent permitted by law, in  
374 administrative proceedings related to the water rights and other rights described in the fifth (5th)  
375 Explanatory Recital of this Contract; Provided however, That the Contracting Officer retains the  
376 right to object to the substance of the Contractor's position in such a proceeding. Provided  
377 further, that in such proceedings the Contracting Officer shall recognize the Contractor has a  
378 legal right under the terms of this Contract to use Project Water.

379 (k) Project Water furnished to the Contractor during any month designated in  
380 a schedule or revised schedule submitted by the Contractor and approved by the Contracting  
381 Officer shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent  
382 that Class 1 Water is called for in such schedule for such month and shall be deemed to have  
383 been accepted as Class 2 Water to the extent Class 2 Water is called for in such schedule for such  
384 month. If in any month the Contractor diverts a quantity of water in addition to the total amount  
385 of Class 1 Water and Class 2 Water set forth in the Contractor's approved schedule or revised  
386 schedule for such month, such additional diversions shall be charged first against the  
387 Contractor's remaining Class 2 Water supply available in the current Year. To the extent the  
388 Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to  
389 account for such additional diversions, such additional diversions shall be charged against the  
390 Contractor's remaining Class 1 Water supply available in the current Year. To the extent the  
391 Contractor's remaining Class 1 Water and Class 2 Water supplies available in the current Year  
392 are not sufficient to account for such additional diversions, such additional diversions shall be  
393 charged first against the Contractor's available Class 2 Water supply and then against the

394 Contractor's available Class 1 Water supply, both for the following Year. Payment for all  
395 additional diversions of water shall be made in accordance with Article 7 of this Contract.

396 (l) If the Contracting Officer determines there is a Project Water supply  
397 available at Friant Dam as the result of an unusually large water supply not otherwise storable for  
398 Project purposes or infrequent and otherwise unmanaged flood flows of short duration, such  
399 water will be made available to the Contractor and others under Section 215 of the Act of  
400 October 12, 1982, pursuant to the priorities specified below if the Contractor enters into a  
401 temporary contract with the United States not to exceed one (1) year for the delivery of such  
402 water or as otherwise provided for in Federal Reclamation law and associated regulations. Such  
403 water may be identified by the Contractor either (i) as additional water to supplement the supply  
404 of Class 1 Water and/or Class 2 Water made available to it pursuant to this Contract or, (ii) upon  
405 written notification to the Contracting Officer, as water to be credited against the Contractor's  
406 Class 2 Water supply available pursuant to this Contract. The Contracting Officer shall make  
407 water determined to be available pursuant to this subsection according to the following priorities:  
408 first, to contractors for Class 1 Water and/or Class 2 Water within the Friant Division; second, to  
409 contractors in the Cross Valley Division of the Project. The Contracting Officer will consider  
410 requests from other parties for Section 215 Water for use within the area identified as the Friant  
411 Division service area in the environmental assessment developed in connection with the  
412 execution of the Existing Contract.

413 (m) Nothing in this Contract, nor any action or inaction of the Contractor or  
414 Contracting Officer in connection with the implementation of this Contract, is intended to

415 override, modify, supersede or otherwise interfere with any term or condition of the water rights  
416 and other rights referred in the fifth (5th) Explanatory Recital of this Contract.

417 (n) The rights of the Contractor under this Contract are subject to the terms of  
418 the contract for exchange waters, dated July 27, 1939, between the United States and the San  
419 Joaquin and Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred  
420 to as the Exchange Contractors), Contract No. 11r-1144, as amended. The United States agrees  
421 that it will not deliver to the Exchange Contractors thereunder waters of the San Joaquin River  
422 unless and until required by the terms of said contract, and the United States further agrees that it  
423 will not voluntarily and knowingly determine itself unable to deliver to the Exchange  
424 Contractors entitled thereto from water that is available or that may become available to it from  
425 the Sacramento River and its tributaries or the Sacramento-San Joaquin Delta those quantities  
426 required to satisfy the obligations of the United States under said Exchange Contract and under  
427 Schedule 2 of the Contract for Purchase of Miller and Lux Water Rights (Contract 11r-1145,  
428 dated July 27, 1939).

429 (o) Pursuant to and consistent with section 10004 of SJRRSA and Paragraph  
430 16 of the Settlement, the Contracting Officer is required to develop and implement a plan for  
431 recirculation, recapture, reuse, exchange or transfer of water released for restoration flows or  
432 interim flows, as those terms are defined in the Settlement, to reduce or avoid impacts to water  
433 deliveries caused by said restoration flows or interim flows and water developed through such  
434 activities may be made available (i) to the Contractor without the need of an additional contract,  
435 and/or (ii) to others on behalf of the Contractor under terms mutually acceptable to the  
436 Contractor and the Contracting Officer that are consistent with the Water Management Goal.

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TIME FOR DELIVERY OF WATER

4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall announce the Contracting Officer’s initial declaration of the Water Made Available. The declaration will be updated monthly and more frequently if necessary, based on then-current operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made Available will be made. The Contracting Officer shall provide forecasts of Project operations and the basis of the estimate, with relevant supporting information, upon the written request of the Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer shall provide the Contractor with the updated Long Term Historic Average. The declaration of Project operations will be expressed in terms of both Water Made Available and the Long Term Historic Average.

(b) On or before each March 1 and at such other times as necessary, the Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer, showing the monthly quantities of Project Water to be delivered by the United States to the Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting Officer shall use all reasonable means to deliver Project Water according to the approved schedule for the Year commencing on such March 1.

(c) The Contractor shall not schedule Project Water in excess of the quantity of Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor’s Service Area, or to sell, transfer or exchange pursuant to Article 10 of this Contract or bank pursuant to subdivision (d) of Article 3 of this Contract during any Year.

458                   (d)     Subject to the conditions set forth in subdivision (a) of Article 3 of this  
459     Contract, the United States shall deliver Project Water to the Contractor in accordance with the  
460     initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any  
461     written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable  
462     time prior to the date(s) on which the requested change(s) is/are to be implemented; Provided,  
463     That the total amount of water requested in that schedule or revision does not exceed the  
464     quantities announced by the Contracting Officer pursuant to the provisions of subdivision (a) of  
465     Article 3 of this Contract, and the Contracting Officer determines that there will be sufficient  
466     capacity available in the appropriate Friant Division Facilities to deliver the water in accordance  
467     with that schedule; Provided further, That the Contractor shall not schedule the delivery of any  
468     water during any period as to which the Contractor is notified by the Contracting Officer or  
469     Operating Non-Federal Entity that Project facilities required to make deliveries to the Contractor  
470     will not be in operation because of scheduled O&M.

471                   (e)     The Contractor may, during the period from and including November 1 of  
472     each Year through and including the last day of February of that Year, request delivery of any  
473     amount of the Class 1 Water estimated by the Contracting Officer to be made available to it  
474     during the following Year. The Contractor may, during the period from and including January 1  
475     of each Year (or such earlier date as may be determined by the Contracting Officer) through and  
476     including the last day of February of that Year, request delivery of any amount of Class 2 Water  
477     estimated by the Contracting Officer to be made available to it during the following Year. Such  
478     water shall hereinafter be referred to as pre-use water. Such request must be submitted in writing  
479     by the Contractor for a specified quantity of pre-use and shall be subject to the approval of the

480 Contracting Officer. Payment for pre-use water so requested shall be at the appropriate Rate(s)  
481 for the following Year in accordance with Article 7 of this Contract and shall be made in  
482 advance of delivery of any pre-use water. The Contracting Officer shall deliver such pre-use  
483 water in accordance with a schedule or any revision thereof submitted by the Contractor and  
484 approved by the Contracting Officer, to the extent such water is available and to the extent such  
485 deliveries will not interfere with the delivery of Project Water entitlements to other Friant  
486 Division contractors or the physical maintenance of the Project facilities. The quantities of  
487 pre-use Water Delivered pursuant to this subdivision shall be deducted from the quantities of  
488 water that the Contracting Officer would otherwise be obligated to make available to the  
489 Contractor during the following Year; Provided, That the quantity of pre-use water to be  
490 deducted from the quantities of either Class 1 Water or Class 2 Water to be made available to the  
491 Contractor in the following Year shall be specified by the Contractor at the time the pre-use  
492 water is requested or as revised in its first schedule for the following Year submitted in  
493 accordance with subdivision (b) of this Article of this Contract, based on the availability of the  
494 following Year water supplies as determined by the Contracting Officer.

495 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

496 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this  
497 Contract shall be delivered to the Contractor at a point or points of delivery either on Project  
498 facilities or another location or locations mutually agreed to in writing by the Contracting Officer  
499 and the Contractor.

500 (b) The Contracting Officer, the Operating Non-Federal Entity, or other  
501 appropriate entity shall make all reasonable efforts to maintain sufficient flows and levels of

502 water in the Friant-Kern Canal to deliver Project Water to the Contractor at specific turnouts  
503 established pursuant to subdivision (a) of this Article of this Contract.

504 (c) The Contractor shall not deliver Project Water to land outside the  
505 Contractor's Service Area unless approved in advance by the Contracting Officer. Until  
506 complete payment of the Repayment Obligation by the Contractor, and notwithstanding any  
507 Additional Capital Obligation that may later be established, the Contractor shall deliver Project  
508 Water in accordance with applicable Full Cost pricing provisions of Federal Reclamation law.

509 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
510 measured and recorded with equipment furnished, installed, operated, and maintained by the  
511 United States, the Operating Non-Federal Entity or other appropriate entity as designated by the  
512 Contracting Officer (hereafter "other appropriate entity") at the point or points of delivery  
513 established pursuant to subdivision (a) of this Article of this Contract. Upon the request of either  
514 party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the  
515 responsible Operating Non-Federal Entity, the accuracy of such measurements and shall take any  
516 necessary steps to adjust any errors appearing therein. For any period of time when accurate  
517 measurements have not been made, the Contracting Officer shall consult with the Contractor and  
518 the responsible Operating Non-Federal Entity prior to making a final determination of the  
519 quantity delivered for that period of time.

520 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity  
521 shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project  
522 Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified  
523 in subdivision (a) of this Article of this Contract. The Contractor shall indemnify the United

524 States, its officers, employees, agents, and assigns on account of damage or claim of damage of  
525 any nature whatsoever for which there is legal responsibility, including property damage,  
526 personal injury, or death arising out of or connected with the control, carriage, handling, use,  
527 disposal, or distribution of such Project Water beyond such delivery points, except for any  
528 damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its  
529 officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity,  
530 with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct  
531 of the Contracting Officer or any of its officers, employees, agents, or assigns, including any  
532 responsible Operating Non-Federal Entity; (iii) negligence of the Contracting Officer or any of  
533 its officers, employees, agents, or assigns including any responsible Operating Non-Federal  
534 Entity; or (iv) damage or claims resulting from a malfunction of facilities owned and/or operated  
535 by the United States or responsible Operating Non-Federal Entity; Provided, That the Contractor  
536 is not the Operating Non-Federal Entity that owned or operated the malfunctioning facility(ies)  
537 from which the damage claim arose.

538 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

539 6. (a) The Contractor has established a measurement program satisfactory to the  
540 Contracting Officer and all surface water delivered for M&I purposes within the Contractor's  
541 Service Area is measured at each M&I service connection. The water measuring devices or  
542 water measuring methods of comparable effectiveness must be acceptable to the Contracting  
543 Officer. The Contractor shall be responsible for installing, operating, and maintaining and  
544 repairing all such measuring devices and implementing all such water measuring methods at no  
545 cost to the United States. The Contracting Officer acknowledges that the Contractor has a

546 metering plan (Exhibit "F") setting forth the milestones and schedule that the Contractor will  
547 implement to comply with the requirements of this Article. The Contractor shall provide an  
548 annual written report to the Contracting Officer describing the Contractor's metering plan  
549 implementation progress. The Contractor shall use the information obtained from such water  
550 measuring devices or water measuring methods to ensure its proper management of the water, to  
551 bill water users for water delivered by the Contractor; and, if applicable, to record water  
552 delivered for M&I purposes by customer class as defined in the Contractor's water conservation  
553 plan provided for in Article 27 of this Contract. Nothing herein contained, however, shall  
554 preclude the Contractor from establishing and collecting any charges, assessments, or other  
555 revenues authorized by California law.

556 (b) To the extent the information has not otherwise been provided, upon  
557 execution of this Contract, the Contractor shall provide to the Contracting Officer a written  
558 report describing the measurement devices or water measuring methods being used or to be used  
559 to implement subdivision (a) of this Article of this Contract and identifying the M&I service  
560 connections or alternative measurement programs approved by the Contracting Officer, at which  
561 such measurement devices or water measuring methods are being used, and, if applicable,  
562 identifying the locations at which such devices and/or methods are not yet being used including a  
563 time schedule for implementation at such locations. The Contracting Officer shall advise the  
564 Contractor in writing within sixty (60) days as to the adequacy of, and necessary modifications,  
565 if any, of the measuring devices or water measuring methods identified in the Contractor's report  
566 and if the Contracting Officer does not respond in such time, they shall be deemed adequate. If  
567 the Contracting Officer notifies the Contractor that the measuring devices or methods are

568 inadequate, the parties shall within sixty (60) days following the Contracting Officer's response,  
569 negotiate in good faith the earliest practicable date by which the Contractor shall modify said  
570 measuring devices and/or measuring methods as required by the Contracting Officer to ensure  
571 compliance with subdivision (a) of this Article of this Contract.

572 (c) All new surface water delivery systems installed within the Contractor's  
573 Service Area after the effective date of this Contract shall also comply with the measurement  
574 provisions described in subdivision (a) of this Article of this Contract.

575 (d) The Contractor shall inform the Contracting Officer and the State of  
576 California in writing by April 30 of each Year of the monthly volume of surface water delivered  
577 within the Contractor's Service Area during the previous Year.

578 (e) The Contractor shall inform the Contracting Officer and the Operating  
579 Non-Federal Entity on or before the twentieth (20<sup>th</sup>) calendar day of each month of the quantity  
580 of M&I Water taken during the preceding month.

581 (f) In the event the provisions of subdivision (a) of this Article that relate to  
582 metering are challenged in a judicial proceeding, the parties agree to meet and confer promptly  
583 and as often as necessary to employ their reasonable best efforts to coordinate a response to the  
584 challenge and, as appropriate, develop revisions to this Contract.

585 RATES, METHOD OF PAYMENT FOR WATER,  
586 AND ACCELERATED REPAYMENT OF FACILITIES

587 7. (a) The Contractor's cost obligations for all Delivered Water shall be  
588 determined in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted  
589 in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the

590 SJRRSA, and such ratesetting policies shall be amended, modified, or superseded only through a  
591 public notice and comment procedure; (ii) applicable Federal Reclamation law and associated  
592 rules and regulations, or policies; and (iii) other applicable provisions of this Contract.

593 (1) The Contractor shall pay the United States as provided for in this  
594 Article of this Contract for the Delivered Water at Rates and Charges determined in accordance  
595 with policies for Irrigation Water and M&I Water. The Contractor's Rates shall be established to  
596 recover its estimated reimbursable costs included in the O&M component of the Rate and  
597 amounts established to recover other charges and deficits, other than the construction costs. The  
598 Rates for O&M costs and Charges shall be adjusted, as appropriate, in accordance with the  
599 provisions of the SJRRSA.

600 (2) In accordance with the SJRRSA, the Contractor's allocable share  
601 of Project construction costs will be repaid pursuant to the provisions of this Contract.

602 (A) The amount due and payable to the United States, pursuant  
603 to the SJRRSA, shall be the Repayment Obligation. The Repayment Obligation has been  
604 computed by the Contracting Officer in a manner consistent with the SJRRSA and is set forth as  
605 a lump sum payment which amounts together with the manner in which such amounts were  
606 calculated are set forth in Exhibit "C-1". The Repayment Obligation is due in lump sum by  
607 January 31, 2014 as provided by the SJRRSA. Notwithstanding any Additional Capital  
608 Obligation that may later be established, receipt of the Contractor's payment of the Repayment  
609 Obligation by the United States shall fully and permanently satisfy the Existing Capital  
610 Obligation.

611 (B) Project construction costs or other capitalized costs  
612 attributable to capital additions to the Project incurred after the effective date of this Contract or  
613 that are not reflected in the schedule referenced in Exhibit "C-1" and properly assignable to the  
614 Contractor, shall be repaid as prescribed by the SJRRSA without interest except as required by  
615 law. Consistent with Federal Reclamation law, interest shall continue to accrue on the M&I  
616 portion of unpaid Project construction costs or other capitalized cost assigned to the Contractor  
617 until such costs are paid. Increases or decreases in Project construction costs or other capitalized  
618 costs assigned to the Contractor caused solely by annual adjustment of Project construction costs  
619 or other capitalized costs assigned to each Central Valley Project contractor by the Secretary  
620 shall not be considered in determining the amounts to be paid pursuant to this subdivision  
621 (a)(2)(B), but will be considered under subdivision (b) of this Article. A separate repayment  
622 agreement shall be established by the Contractor and the Contracting Officer to accomplish  
623 repayment of all additional Project construction costs or other capitalized costs assigned to the  
624 Contractor within the timeframe prescribed by the SJRRSA subject to the following:

625 (1) If the collective annual Project construction costs or  
626 other capitalized costs that are incurred after the effective date of this Contract and properly  
627 assignable to the contractors are less than \$5,000,000, then the portion of such costs properly  
628 assignable to the Contractor shall be repaid in not more than five (5) years after notification of  
629 the allocation. This amount is the result of a collective annual allocation of Project construction  
630 costs to the contractors exercising contract conversions; Provided, That the reference to the  
631 amount of \$5,000,000 shall not be a precedent in any other context.

632 (2) If the collective annual Project construction costs or

633 other capitalized costs that are incurred after the effective date of this Contract and properly

634 assignable to the contractors are \$5,000,000 or greater, then the portion of such costs properly

635 assignable to the Contractor shall be repaid as provided by applicable Federal Reclamation law.

636 This amount is the result of a collective annual allocation of Project construction costs to the

637 contractors exercising contract conversions; Provided, That the reference to the amount of

638 \$5,000,000 shall not be a precedent in any other context.

639 (b) Consistent with Section 10010(b) of the SJRRSA, following a final cost

640 allocation by the Secretary upon completion of the construction of the Central Valley Project, the

641 amounts paid by the Contractor shall be subject to adjustment to reflect the effect of any

642 reallocation of Project construction costs or other capitalized costs assigned to the Contractor

643 that may have occurred between the determination of Contractor's Existing Capital Obligation

644 and the final cost allocation. In the event that the final cost allocation, as determined by the

645 Secretary, indicates that the costs properly assignable to the Contractor, as determined by the

646 Contracting Officer, are greater than the Existing Capital Obligation and other amounts of

647 Project construction costs or other capitalized costs paid by the Contractor, then the Contractor

648 shall be obligated to pay the remaining allocated costs. The term of such additional repayment

649 contract shall be no less than one (1) year and no more than ten (10) years, however, mutually

650 agreeable provisions regarding the rate of repayment of such amount may be developed by the

651 parties. In the event that the final cost allocation, as determined by the Secretary, indicates that

652 the costs properly assignable to the Contractor, as determined by the Contracting Officer, are less

653 than the Existing Capital Obligation and other amounts of Project construction costs or other

654 capitalized costs paid by the Contractor, then the Contracting Officer shall credit such  
655 overpayment as an offset against any outstanding or future obligation of the Contractor,  
656 consistent with the SJRRSA. This Contract shall be implemented in a manner consistent with  
657 Section 10010(f) of the SJRRSA.

658 (c) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
659 provide the Contractor an estimate of the Charges for Project Water that will be applied to the  
660 period October 1, of the current Calendar Year, through September 30, of the following Calendar  
661 Year, and the basis for such estimate. The Contractor shall be allowed not less than two (2)  
662 months to review and comment on such estimates. On or before September 15 of each Calendar  
663 Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect  
664 during the period October 1 of the current Calendar Year, through September 30 of the following  
665 Calendar Year, and such notification shall revise Exhibit "B". Charges shall be subject to  
666 reduction consistent with the SJRRSA based upon the average annual delivery amount agreed to  
667 by the Contracting Officer and the Contractor.

668 (1) Upon complete payment of the Repayment Obligation by the  
669 Contractor, and notwithstanding any Additional Capital Obligation that may later be established,  
670 for the years 2020 through 2039 inclusive, Charges shall reflect the reduction on a per acre-foot  
671 basis consistent with Section 10010(d)(1) of the SJRRSA. Exhibit "D" sets forth the reduction in  
672 Charges to offset the Financing Costs as prescribed in Section 10010(d)(1) of the SJRRSA;  
673 Provided, That if the Secretary determines such Charges are otherwise needed, an equivalent  
674 reduction will be made to O&M costs consistent with such provisions of the SJRRSA.  
675 Consistent with Section 10010(d)(1) of the SJRRSA and as shown in Exhibit "D", the Friant

676 Surcharge reduction has been calculated based upon the anticipated average annual water  
677 deliveries, for the purpose of this reduction only, mutually agreed upon by the Secretary and the  
678 Contractor for the period from January 1, 2020 through December 31, 2039. The Friant  
679 Surcharge reduction shall remain fixed and shall only be applied to Water Delivered pursuant to  
680 this Contract to which the Friant Surcharge applies (including but not limited to water  
681 transferred, banked, or exchanged), commencing on January 1, 2020 until such volume of Water  
682 Delivered equals 1,020,000 acre-feet or December 31, 2039, whichever occurs first.

683 (2) Further, to fully offset the Financing Costs, Contractor shall be  
684 entitled to a reduction in other outstanding or future obligations of the Contractor in accordance  
685 with Section 10010(d)(2) of the SJRRSA. The amount of such further reduction in outstanding  
686 or future obligations of the Contractor after October 1, 2019 has been computed by the  
687 Contracting Officer, and as computed, such amount is set forth in Exhibit "D".

688 (d) Prior to October 1 of each Calendar Year, the Contracting Officer shall  
689 make available to the Contractor an estimate of the Rates and Tiered Pricing Component for  
690 Project Water for the following Year and the computations and cost allocations upon which those  
691 Rates are based. The Contractor shall be allowed not less than two (2) months to review and  
692 comment on such computations and cost allocations. By December 31 of each Calendar Year,  
693 the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing  
694 Component to be in effect for the upcoming Year, and such notification shall revise Exhibit "B".  
695 The O&M component of the Rate may be reduced as provided in the SJRRSA.

696 (e) At the time the Contractor submits the initial schedule for the delivery of  
697 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the

698 Contractor shall make an advance payment to the United States equal to the total amount payable  
699 pursuant to the applicable Rate(s) set under subdivision (a) of this Article of this Contract, for the  
700 Project Water scheduled to be delivered pursuant to this Contract during the first two (2)  
701 calendar months of the Year. Before the end of the first month and before the end of each  
702 calendar month thereafter, the Contractor shall make an advance payment to the United States, at  
703 the Rate(s) set under subdivision (a) of this Article of this Contract, for the Water Scheduled to  
704 be delivered pursuant to this Contract during the second month immediately following.

705 Adjustments between advance payments for Water Scheduled and payments at Rates due for  
706 Water Delivered shall be made before the end of the following month; Provided, That any  
707 revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which  
708 increases the amount of Water Delivered pursuant to this Contract during any month shall be  
709 accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project  
710 Water is not delivered to the Contractor in advance of such payment. In any month in which the  
711 quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of  
712 Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered  
713 to the Contractor unless and until an advance payment at the Rates then in effect for such  
714 additional Project Water is made. Final adjustment between the advance payments for the Water  
715 Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this  
716 Contract shall be made as soon as practicable but no later than April 30th of the following Year,  
717 or sixty (60) days after the delivery of Project Water carried over under subdivision (g) of Article  
718 3 of this Contract if such water is not delivered by the last day of February.

719                   (f)     The Contractor shall also make a payment in addition to the Rate(s) in  
720 subdivision (e) of this Article of this Contract to the United States for Water Delivered, at the  
721 Charges and the appropriate Tiered Pricing Component then in effect, before the end of the  
722 month following the month of delivery; Provided, That the Contractor may be granted an  
723 exception from the Tiered Pricing Component pursuant to subdivision (l)(2) of this Article of this  
724 Contract. The payments shall be consistent with the quantities of Irrigation Water and M&I  
725 Water Delivered as shown in the water delivery report for the subject month prepared by the  
726 Contracting Officer. Such water delivery report shall be the basis for payment of Charges and  
727 Tiered Pricing Components by the Contractor, and shall be provided to the Contractor by the  
728 Contracting Officer (as applicable) within five (5) days after the end of the month of delivery.  
729 The water delivery report shall be deemed a bill basis for payment of Charges and the applicable  
730 Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment  
731 of Charges shall be made through the adjustment of payments due to the United States for  
732 Charges for the next month. Any amount to be paid for past due payment of Charges shall be  
733 computed pursuant to Article 21 of this Contract.

734                   (g)     The Contractor shall pay for any Water Delivered under subdivision (d),  
735 (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to  
736 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting  
737 policies; Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this  
738 Contract shall be no more than the otherwise applicable Rate for Irrigation Water or M&I Water  
739 under subdivision (a) of this Article of this Contract.

740                   (h)     Payments to be made by the Contractor to the United States under this  
741 Contract may be paid from any revenues available to the Contractor.

742                   (i)     All revenues received by the United States from the Contractor relating to  
743 the delivery of Project Water or the delivery of non-project water through Project facilities shall  
744 be allocated and applied in accordance with Federal Reclamation law and the associated rules or  
745 regulations, the then-existing Project Ratesetting policies for M&I Water and consistent with the  
746 SJRRSA.

747                   (j)     The Contracting Officer shall keep its accounts, pertaining to the  
748 administration of the financial terms and conditions of its long-term contracts, in accordance  
749 with applicable Federal standards so as to reflect the application of Project costs and revenues.  
750 The Contracting Officer shall, each Year upon request of the Contractor, provide to the  
751 Contractor a detailed accounting of all Project and Contractor expense allocations, the  
752 disposition of all Project and Contractor revenues, and a summary of all water delivery  
753 information. The Contracting Officer and the Contractor shall enter into good faith negotiations  
754 to resolve any discrepancies or disputes relating to accountings, reports, or information.

755                   (k)     The parties acknowledge and agree that the efficient administration of this  
756 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
757 policies, and procedures used for establishing Rates, Charges, Tiered Pricing Components,  
758 and/or for making and allocating payments, other than those set forth in this Article of this  
759 Contract, may be in the mutual best interest of the parties, it is expressly agreed that the parties  
760 may enter into agreements to modify the mechanisms, policies, and procedures for any of those  
761 purposes while this Contract is in effect without amending this Contract.

762 (l) (1) Beginning at such time as the total of the deliveries of Class 1  
763 Water and Class 2 Water in a Year exceed eighty (80) percent of the Contract Total, then before  
764 the end of the month following the month of delivery the Contractor shall make an additional  
765 payment to the United States equal to the applicable Tiered Pricing Component. The Tiered  
766 Pricing Component for the total of the deliveries of Class 1 Water and Class 2 Water in excess of  
767 eighty (80) percent of the Contract Total, but less than or equal to ninety (90) percent of the  
768 Contract Total, shall equal the one-half of the difference between the Rate established under  
769 subdivision (a) of this Article of this Contract and the Irrigation Full Cost Water Rate, or M&I  
770 Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the total of  
771 the deliveries of Class 1 Water and Class 2 Water which exceeds ninety (90) percent of the  
772 Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of  
773 this Article of this Contract and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water  
774 Rate, whichever is applicable.

775 (2) Omitted.

776 (3) For purposes of determining the applicability of the Tiered Pricing  
777 Components pursuant to this Article of this Contract, Water Delivered shall include Project  
778 Water that the Contractor transfers to others but shall not include Project Water transferred and  
779 delivered to the Contractor.

780 (m) Rates under the respective ratesetting policies will be established to  
781 recover only reimbursable O&M (including any deficits) costs of the Project, as those terms are  
782 used in the then-existing Project ratesetting policies, and consistent with the SJRRSA, and  
783 interest, where appropriate, except in instances where a minimum Rate is applicable in

784 accordance with the relevant Project ratesetting policy. Changes of significance in practices  
785 which implement the Contracting Officer's ratesetting policies will not be implemented until the  
786 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and  
787 impact of the proposed change.

788 (n) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the  
789 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates  
790 adjusted upward or downward to reflect the changed costs of delivery (if any) incurred by the  
791 Contracting Officer in the delivery of the transferred Project Water to the transferee's point of  
792 delivery in accordance with the then-existing Central Valley Project Ratesetting Policy.

793 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

794 8. Omitted.

795 RECOVERED WATER ACCOUNT

796 9. (a) Notwithstanding any other provisions of this Contract, water delivered to  
797 the Contractor under its Recovered Water Account as provided at Paragraph 16(b) of the  
798 Settlement and affirmed by Section 10004(a)(5) of the SJRRSA shall be at the total cost of  
799 \$10.00 per acre foot. Recovered Water Account water provided to the Contractor shall be  
800 administered at a priority for delivery lower than Class 2 Water and higher than Section 215  
801 Water.

802 (b) The manner in which the Recovered Water Account will be administered  
803 will be developed in accordance with subdivision (k) of Article 7 of this Contract, the SJRRSA,  
804 and Paragraph 16 of the Settlement.

**SALES, TRANSFERS, AND EXCHANGES OF WATER**

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10. (a) The right to receive Project Water provided for in this Contract may be sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of California if such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this Contract may take place without the prior written approval of the Contracting Officer, except as provided for in subdivisions (b) and (c) of this Article of this Contract. No such Project Water sales, transfers, or exchanges shall be approved, where approval is required, absent compliance with appropriate environmental documentation including but not limited to the National Environmental Policy Act and the Endangered Species Act. Such environmental documentation must include, as appropriate, an analysis of groundwater impacts and economic and social effects, including environmental justice, of the proposed Project Water sales, transfers and exchanges on both the transferor/exchanger and transferee/exchange recipient.

(b) In order to facilitate efficient water management by means of Project Water sales, transfers, or exchanges of the type historically carried out among Project Contractors located within the same geographical area and to allow the Contractor to participate in an accelerated water transfer program, the Contracting Officer has prepared, as appropriate, necessary environmental documentation including, but not limited to, the National Environmental Policy Act and the Endangered Species Act analyzing annual Project Water sales, transfers, or exchanges among Contractors within the same geographical area and the Contracting Officer has determined that such Project Water sales, transfers, and exchanges comply with applicable law.

827                   (c)     Project Water sales, transfers, and exchanges analyzed in the  
828     environmental documentation referenced in subdivision (b) of this Article of this Contract, shall  
829     be conducted with advance notice to the Contracting Officer and the Contracting Officer's  
830     written acknowledgement of the transaction, but shall not require prior written approval by the  
831     Contracting Officer.

832                   (d)     For Project Water sales, transfers, or exchanges to qualify under  
833     subdivision (b) of this Article of this Contract such Project Water sale, transfer, or exchange  
834     must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for  
835     M&I use, groundwater recharge, groundwater banking, similar groundwater activities, surface  
836     water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to  
837     established cropland, wildlife refuges, groundwater basins or M&I use; (ii) occur within a single  
838     Year; (iii) occur between a willing seller and a willing buyer or willing exchangers; (iv) convey  
839     water through existing facilities with no new construction or modifications to facilities and be  
840     between existing Project Contractors and/or the Contractor and the United States, Department of  
841     the Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and  
842     requirements imposed for protection of the environment and Indian Trust Assets, as defined  
843     under Federal law.

844                   (e)     The environmental documentation and the Contracting Officer's  
845     compliance determination for transactions described in subdivision (b) of this Article of this  
846     Contract shall be reviewed every five (5) years and updated, as necessary, prior to the expiration  
847     of the then-existing five (5) year period. All subsequent environmental documentation shall

848 include an alternative to evaluate not less than the quantity of Project Water historically sold,  
849 transferred, or exchanged within the same geographical area.

850 (f) Consistent with Section 10010(e)(l) of the SJRRSA, any agreement  
851 providing for sale, transfer, or exchange of Project Water that is not used for interim flows or  
852 restoration flows pursuant to Paragraphs 13 and 15 of the Settlement, shall be deemed to satisfy  
853 the requirements of CVPIA section 3405(a)(1)(A) and (I); Provided, That such sales, transfers, or  
854 exchanges comply with sub-division (f)(1) and (f)(2) below.

855 (1) Project Water sales, transfers, and exchanges conducted under the  
856 provisions of subdivision (f) of this Article of this Contract shall not require the Contracting  
857 Officer's concurrence as to compliance with CVPIA 3405(a)(1)(A) and (I); Provided, That the  
858 Contractor shall, for Project Water sales, transfers, or exchanges, with a term greater than one (1)  
859 year, provide ninety (90) days written advance notification to the Contracting Officer and  
860 similarly thirty (30) days written advance notification of any Project Water sale, transfer, or  
861 exchange with a term of less than one (1) year. The Contracting Officer shall promptly make  
862 such notice publicly available.

863 (2) The Contractor's thirty (30) days or ninety (90) days advance  
864 written notification pursuant to subdivision (f)(1) of this Article of this Contract shall explain  
865 how the proposed Project Water sales, transfers, or exchanges are intended to reduce, avoid, or  
866 mitigate impacts to Project Water deliveries caused by interim or restoration flows or is  
867 otherwise intended to facilitate the Water Management Goal as described in the SJRRSA. The  
868 Contracting Officer shall promptly make such notice publicly available.

869                   (3)     In addition, the Contracting Officer shall, at least annually, make  
870     available publicly a compilation of the number of Project Water sales, transfers, and exchange  
871     agreements implemented in accordance with sub-divisions (f)(1) and (f)(2) of this Article of this  
872     Contract.

873                   (4)     Project Water sold, transferred, or exchanged under an agreement  
874     that meets the terms of subdivisions (f)(1) and (f)(2) of this Article of this Contract shall not be  
875     counted as a replacement or an offset for purposes of determining reductions to Project Water  
876     deliveries to any Friant Division Project Contractor except as provided in Paragraph 16(b) of the  
877     Settlement.

878                   (g)     Upon complete payment of the Repayment Obligation by the Contractor,  
879     and notwithstanding any Additional Capital Obligation that may later be established, in the case  
880     of a sale or transfer of Irrigation Water to another contractor which is otherwise subject to the  
881     acreage limitations, reporting, and Full Cost pricing provisions of the RRA, such sold or  
882     transferred Irrigation Water shall not be subject to such RRA provisions, however, in the case of  
883     a sale or transfer of Irrigation Water to the Contractor from another contractor which is subject to  
884     RRA provisions, such RRA provisions shall apply to delivery of such water.

885                   APPLICATION OF PAYMENTS AND ADJUSTMENTS

886                   11.     (a)     The amount of any overpayment by the Contractor of the Contractor's  
887     O&M, Capital, and deficit (if any) obligations for the Year shall be applied first to any current  
888     liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of  
889     more than One Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu  
890     of a refund, any amount of such overpayment, at the option of the Contractor, may be credited

891 against amounts to become due to the United States by the Contractor. With respect to  
892 overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or  
893 anyone having or claiming to have the right to the use of any of the Project Water supply  
894 provided for herein. All credits and refunds of overpayments shall be made within thirty (30)  
895 days of the Contracting Officer obtaining direction as to how to credit or refund such  
896 overpayment in response to the notice to the Contractor that it has finalized the accounts for the  
897 Year in which the overpayment was made.

898 (b) All advances for miscellaneous costs incurred for work requested by the  
899 Contractor pursuant to Article 26 of this Contract shall be adjusted to reflect the actual costs  
900 when the work has been completed. If the advances exceed the actual costs incurred, the  
901 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's  
902 advances, the Contractor will be billed for the additional costs pursuant to Article 26 of this  
903 Contract.

904 TEMPORARY REDUCTIONS—RETURN FLOWS

905 12. (a) The Contracting Officer shall make all reasonable efforts to optimize  
906 delivery of the Contract Total subject to: (i) the authorized purposes and priorities of the Project;  
907 (ii) the requirements of Federal law and the Settlement; and (iii) the obligations of the United  
908 States under existing contracts, or renewals thereof, providing for water deliveries from the  
909 Project.

910 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily  
911 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for  
912 the purposes of investigation, inspection, maintenance, repair, or replacement of any of the

913 Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor,  
914 but so far as feasible the Contracting Officer or Operating Non-Federal Entity will give the  
915 Contractor due notice in advance of such temporary discontinuance or reduction, except in case  
916 of emergency, in which case no notice need be given; Provided, That the United States shall use  
917 its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of  
918 service after such reduction or discontinuance, and if requested by the Contractor, the United  
919 States will, if possible, deliver the quantity of Project Water which would have been delivered  
920 hereunder in the absence of such discontinuance or reduction.

921 (c) The United States reserves the right to all seepage and return flow water  
922 derived from Water Delivered to the Contractor hereunder which escapes or is discharged  
923 beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for  
924 the United States any right as seepage or return flow to water being used pursuant to this  
925 Contract for surface irrigation or underground storage either being put to reasonable and  
926 beneficial use pursuant to this Contract within the Contractor's Service Area by the Contractor or  
927 those claiming by, through, or under the Contractor. For purposes of this subdivision,  
928 groundwater recharge, groundwater banking and all similar groundwater activities will be  
929 deemed to be underground storage.

930 CONSTRAINTS ON THE AVAILABILITY OF WATER

931 13. (a) In its operation of the Project, the Contracting Officer will use all  
932 reasonable means to guard against a Condition of Shortage in the quantity of water to be made  
933 available to the Contractor pursuant to this Contract. In the event the Contracting Officer

934 determines that a Condition of Shortage appears probable, the Contracting Officer will notify the  
935 Contractor of said determination as soon as practicable.

936 (b) If there is a Condition of Shortage because of errors in physical operations  
937 of the Project, drought, other physical causes beyond the control of the Contracting Officer or  
938 actions taken by the Contracting Officer to meet legal obligations, including but not limited to  
939 obligations pursuant to the Settlement then, except as provided in Article 19 of this Contract, no  
940 liability shall accrue against the United States or any of its officers, agents, or employees for any  
941 damage, direct or indirect, arising therefrom.

942 (c) The United States shall not execute contracts which together with this  
943 Contract, shall in the aggregate provide for furnishing Class 1 Water in excess of 800,000  
944 acre-feet per Year or Class 2 Water in excess of 1,401,475 acre-feet per Year; Provided, That,  
945 subject to subdivision (l) of Article 3 of this Contract, the limitation placed on Class 2 Water  
946 contracts shall not prohibit the United States from entering into temporary contracts of one year  
947 or less in duration for delivery of Project Water to other entities if such water is not necessary to  
948 meet the schedules as may be submitted by all Friant Division Project Contractors entitled to  
949 receive Class 1 Water and/or Class 2 Water under their contracts. Nothing in this subdivision  
950 shall limit the Contracting Officer's ability to take actions that result in the availability of new  
951 water supplies to be used for Project purposes and allocating such new supplies; Provided, That  
952 the Contracting Officer shall not take such actions until after consultation with the Friant  
953 Division Project Contractors.

954 (d) The Contracting Officer shall not deliver any Class 2 Water pursuant to  
955 this or any other contract heretofore or hereafter entered into any Year unless and until the

956 Contracting Officer determines that the cumulative total quantity of Class 1 Water specified in  
957 subdivision (c) of this Article of this Contract will be available for delivery in said Year. If the  
958 Contracting Officer determines there is or will be a shortage in any Year in the quantity of  
959 Class 1 Water available for delivery, the Contracting Officer shall apportion the available Class 1  
960 Water among all Contractors entitled to receive such water that will be made available at Friant  
961 Dam in accordance with the following:

962 (1) A determination shall be made of the total quantity of Class 1  
963 Water at Friant Dam which is available for meeting Class 1 Water contractual commitments, the  
964 amount so determined being herein referred to as the available supply.

965 (2) The total available Class 1 supply shall be divided by the Class 1  
966 Water contractual commitments, the quotient thus obtained being herein referred to as the  
967 Class 1 apportionment coefficient.

968 (3) The total quantity of Class 1 Water under Article 3 of this Contract  
969 shall be multiplied by the Class 1 apportionment coefficient and the result shall be the quantity of  
970 Class 1 Water required to be delivered by the Contracting Officer to the Contractor for the  
971 respective Year, but in no event shall such amount exceed the total quantity of Class 1 Water  
972 specified in subdivision (a) of Article 3 of this Contract.

973 (e) If the Contracting Officer determines there is less than the quantity of  
974 Class 2 Water which the Contractor otherwise would be entitled to receive pursuant to Article 3  
975 of this Contract, the quantity of Class 2 Water which shall be furnished to the Contractor by the  
976 Contracting Officer will be determined in the manner set forth in paragraphs (1), (2), and (3), of

977 subdivision (d) of this Article of this Contract substituting the term “Class 2” for the term “Class  
978 1.”

979 (f) In the event that in any Year there is made available to the Contractor, by  
980 reason of any shortage or apportionment as provided in subdivisions (a), (d), or (e) of this Article  
981 of this Contract, or any discontinuance or reduction of service as set forth in subdivision (b) of  
982 Article 12 of this Contract, less than the quantity of water which the Contractor otherwise would  
983 be entitled to receive hereunder, there shall be made an adjustment on account of the amounts  
984 already paid to the Contracting Officer by the Contractor for Class 1 Water and Class 2 Water  
985 for said Year in accordance with Article 11 of this Contract.

986 UNAVOIDABLE GROUNDWATER PERCOLATION

987 14. Omitted.

988 ACREAGE LIMITATION

989 15. Omitted.

990 RULES, REGULATIONS, AND DETERMINATIONS

991 16. (a) The parties agree that the delivery of water or the use of Federal facilities  
992 pursuant to this Contract is subject to Federal Reclamation law, as amended and supplemented,  
993 and the rules and regulations promulgated by the Secretary of the Interior under Federal  
994 Reclamation law.

995 (b) The Contracting Officer shall have the right to make determinations  
996 necessary to administer this contract that are consistent with its provisions, the laws of the United  
997 States and the State of California, and the rules and regulations promulgated by the Secretary of  
998 the Interior. Such determinations shall be made in consultation with the Contractor.

999 (c) The terms of this Contract are subject to the Settlement and the SJRRSA.

1000 Nothing in this Contract shall be interpreted to limit or interfere with the full implementation of  
1001 the Settlement and the SJRRSA.

1002

PROTECTION OF WATER AND AIR QUALITY

1003           17.   (a)   Project facilities used to make available and deliver water to the  
1004 Contractor shall be operated and maintained in the most practical manner to maintain the quality  
1005 of the water at the highest level possible as determined by the Contracting Officer: *Provided,*  
1006 *That* the United States does not warrant the quality of the water delivered to the Contractor and is  
1007 under no obligation to furnish or construct water treatment facilities to maintain or improve the  
1008 quality of water delivered to the Contractor.

1009           (b)   The Contractor shall comply with all applicable water and air pollution  
1010 laws and regulations of the United States and the State of California; and shall obtain all required  
1011 permits or licenses from the appropriate Federal, State, or local authorities necessary for the  
1012 delivery of water by the Contractor; and shall be responsible for compliance with all Federal,  
1013 State, and local water quality standards applicable to surface and subsurface drainage and/or  
1014 discharges generated through the use of Federal or Contractor facilities or project water provided  
1015 by the Contractor within the Contractor's Project Water Service Area.

1016           (c)   This article shall not affect or alter any legal obligations of the Secretary to  
1017 provide drainage or other discharge services.

1018  
1019

WATER ACQUIRED BY THE CONTRACTOR  
OTHER THAN FROM THE UNITED STATES

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18.   (a)   Omitted.

1021

1022           (b)   Upon complete payment of the Repayment Obligation by the Contractor,  
1023 and notwithstanding any Additional Capital Obligation that may later be established, water or  
1024 water rights now owned or hereafter acquired by the Contractor other than from the United  
1025 States pursuant to this Contract and Irrigation Water furnished pursuant to the terms of this  
1026 Contract may be simultaneously transported through the same distribution facilities of the  
1027 Contractor without the payment of fees to the United States and without application of Federal  
1028 Reclamation law to Water Delivered pursuant to this Contract or to lands which receive Water  
Delivered to Contractor pursuant to this Contract.

1029                   (c)     Water or water rights now owned or hereafter acquired by the Contractor,  
1030     other than from the United States or adverse to the Project or its contractors (i.e., non-project  
1031     water), may be stored, conveyed and/or diverted through Project facilities, other than Friant  
1032     Division Facilities, subject to the completion of appropriate environmental documentation, with  
1033     the approval of the Contracting Officer and the execution of any contract determined by the  
1034     Contracting Officer to be necessary, consistent with the following provisions:

1035                   (1)     The Contractor may introduce non-project water into Project  
1036     facilities and deliver said water to lands within the Contractor's Service Area subject to payment  
1037     to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate  
1038     as determined by the Contracting Officer. In addition, if electrical power is required to pump  
1039     non-project water, the Contractor shall be responsible for obtaining the necessary power and  
1040     paying the necessary charges therefor.

1041                   (2)     Delivery of such non-project water in and through Project facilities  
1042     shall only be allowed to the extent such deliveries do not: (i) interfere with other Project  
1043     purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water  
1044     available to other Project Contractors; (iii) interfere with the delivery of contractual water  
1045     entitlements to any other Project Contractors; (iv) interfere with the physical maintenance of the  
1046     Project facilities; or (v) result in the United States incurring any liability or unreimbursed costs  
1047     or expenses thereby.

1048                   (3)     Neither the United States nor the Operating Non-Federal Entity  
1049     shall be responsible for control, care or distribution of the non-project water before it is  
1050     introduced into or after it is delivered from the Project facilities. The Contractor hereby releases

1051 and agrees to defend and indemnify the United States and the Operating Non-Federal Entity, and  
1052 their respective officers, agents, and employees, from any claim for damage to persons or  
1053 property, direct or indirect, resulting from Contractor's diversion or extraction of non-project  
1054 water from any source.

1055 (4) Diversion of such non-project water into Project facilities shall be  
1056 consistent with all applicable laws, and if involving groundwater, consistent with any  
1057 groundwater management plan for the area from which it was extracted.

1058 (5) After Project purposes are met, as determined by the Contracting  
1059 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity  
1060 of the facilities declared to be available by the Contracting Officer for conveyance and  
1061 transportation of non-project water prior to any such remaining capacity being made available to  
1062 non-project contractors.

1063 (d) Non-project water may be stored, conveyed and/or diverted through Friant  
1064 Division Facilities, subject to the prior completion of appropriate environmental documentation  
1065 and approval of the Contracting Officer without execution of a separate contract, consistent with  
1066 subdivisions (c)(1) through (c)(5) of this Article and any other condition determined to be  
1067 appropriate by the Contracting Officer.

1068 OPINIONS AND DETERMINATIONS

1069 19. Where the terms of this Contract provide for actions to be based upon the opinion  
1070 or determination of either party to this Contract, said terms shall not be construed as permitting  
1071 such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
1072 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly

1073 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,  
1074 or unreasonable opinion or determination. Each opinion or determination by either party shall be  
1075 provided in a timely manner. Nothing in this Article of this Contract is intended to or shall affect  
1076 or alter the standard of judicial review applicable under Federal law to any opinion or  
1077 determination implementing a specific provision of Federal law embodied in statute or  
1078 regulation.

1079 COORDINATION AND COOPERATION

1080 20. (a) In order to further their mutual goals and objectives, the Contracting  
1081 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and  
1082 with other affected Project Contractors, in order to improve the operation and management of the  
1083 Project. The communication, coordination, and cooperation regarding operations and  
1084 management shall include, but not limited to, any action which will or may materially affect the  
1085 quantity or quality of Project Water supply, the allocation of Project Water supply, and Project  
1086 financial matters including, but not limited to, budget issues. The communication, coordination,  
1087 and cooperation provided for hereunder shall extend to all provisions of this Contract. Each  
1088 party shall retain exclusive decision making authority for all actions, opinions, and  
1089 determinations to be made by the respective party.

1090 (b) It is the intent of the Secretary to improve water supply reliability. To  
1091 carry out this intent:

1092 (1) The Contracting Officer will, at the request of the Contractor,  
1093 assist in the development of integrated resource management plans for the Contractor. Further,

1094 the Contracting Officer will, as appropriate, seek authorizations for implementation of  
1095 partnerships to improve water supply, water quality, and reliability.

1096 (2) The Secretary will, as appropriate, pursue program and project  
1097 implementation and authorization in coordination with Project Contractors to improve the water  
1098 supply, water quality, and reliability of the Project for all Project purposes.

1099 (3) The Secretary will coordinate with Project Contractors and the  
1100 State of California to seek improved water resource management.

1101 (4) The Secretary will coordinate actions of agencies within the  
1102 Department of the Interior that may impact the availability of water for Project purposes.

1103 (5) The Contracting Officer shall periodically, but not less than  
1104 annually, hold division level meetings to discuss Project operations, division level water  
1105 management activities, and other issues as appropriate.

1106 (c) Without limiting the contractual obligations of the Contracting Officer  
1107 hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting  
1108 Officer's ability to communicate, coordinate, and cooperate with the Contractor or other  
1109 interested stakeholders or to make decisions in a timely fashion as needed to protect health,  
1110 safety, physical integrity of structures or facilities, or the Contracting Officer's ability to comply  
1111 with applicable laws.

1112 CHARGES FOR DELINQUENT PAYMENTS

1113 21. (a) The Contractor shall be subject to interest, administrative and penalty  
1114 charges on delinquent installments or payments. When a payment is not received by the due  
1115 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond  
1116 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an  
1117 administrative charge to cover additional costs of billing and processing the delinquent payment.  
1118 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional

1119 penalty charge of six (6) percent per year for each day the payment is delinquent beyond the due  
1120 date. Further, the Contractor shall pay any fees incurred for debt collection services associated  
1121 with a delinquent payment.

1122 (b) The interest charge rate shall be the greater of the rate prescribed quarterly  
1123 in the Federal Register by the Department of the Treasury for application to overdue payments,  
1124 or the interest rate of one-half of one (0.5) percent per month prescribed by Section 6 of the  
1125 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be  
1126 determined as of the due date and remain fixed for the duration of the delinquent period.

1127 (c) When a partial payment on a delinquent account is received, the amount  
1128 received shall be applied, first to the penalty, second to the administrative charges, third to the  
1129 accrued interest, and finally to the overdue payment.

1130 EQUAL EMPLOYMENT OPPORTUNITY

1131 22. During the performance of this Contract, the Contractor agrees as follows:

1132 (a) The Contractor will not discriminate against any employee or applicant for  
1133 employment because of race, color, religion, sex, disability, or national origin. The Contractor  
1134 will take affirmative action to ensure that applicants are employed, and that employees are  
1135 treated during employment, without regard to their race, color, religion, sex, disability, or  
1136 national origin. Such action shall include, but not be limited to the following: employment,  
1137 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination;  
1138 rates of pay or other forms of compensation; and selection for training, including apprenticeship.  
1139 The Contractor agrees to post in conspicuous places, available to employees and applicants for  
1140 employment, notices to be provided by the Contracting Officer setting forth the provisions of this  
1141 nondiscrimination clause.

1142 (b) The Contractor will, in all solicitations or advertisements for employees  
1143 placed by or on behalf of the Contractor, state that all qualified applicants will receive  
1144 consideration for employment without regard to race, color, religion, sex, disability, or national  
1145 origin.

1146 (c) The Contractor will send to each labor union or representative of workers  
1147 with which it has a collective bargaining agreement or other contract or understanding, a notice,  
1148 to be provided by the Contracting Officer, advising the labor union or workers' representative of  
1149 the Contractor's commitments under Section 202 of Executive Order 11246 of September 24,  
1150 1965, and shall post copies of the notice in conspicuous places available to employees and  
1151 applicants for employment.

1152 (d) The Contractor will comply with all provisions of Executive Order No.  
1153 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary  
1154 of Labor.

1155 (e) The Contractor will furnish all information and reports required by  
1156 Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the  
1157 Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and  
1158 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to  
1159 ascertain compliance with such rules, regulations, and orders.

1160 (f) In the event of the Contractor's noncompliance with the nondiscrimination  
1161 clauses of this contract or with any of such rules, regulations, or orders, this contract may be  
1162 canceled, terminated or suspended in whole or in part and the Contractor may be declared  
1163 ineligible for further Government contracts in accordance with procedures authorized in  
1164 Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and  
1165 remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule,  
1166 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1167 (g) The Contractor will include the provisions of paragraphs (1) through (7) in  
1168 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
1169 Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24,  
1170 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor  
1171 will take such action with respect to any subcontract or purchase order as may be directed by the  
1172 Secretary of Labor as a means of enforcing such provisions, including sanctions for  
1173 noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or is  
1174 threatened with, litigation with a subcontractor or vendor as a result of such direction, the  
1175 Contractor may request the United States to enter into such litigation to protect the interests of  
1176 the United States.

1177 GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

1178 23. (a) The obligation of the Contractor to pay the United States as provided in  
1179 this Contract is a general obligation of the Contractor notwithstanding the manner in which the  
1180 obligation may be distributed among the Contractor's water users and notwithstanding the  
1181 default of individual water users in their obligations to the Contractor.

1182 (b) The payment of charges becoming due hereunder is a condition precedent  
1183 to receiving benefits under this Contract. The United States shall not make water available to the  
1184 Contractor through Project facilities during any period in which the Contractor may be in arrears  
1185 in the advance payment of water rates due the United States. The Contractor shall not furnish  
1186 water made available pursuant to this Contract for lands or parties which are in arrears in the  
1187 advance payment of water rates levied or established by the Contractor.

1188 (c) With respect to subdivision (b) of this Article of this Contract, the  
1189 Contractor shall have no obligation to require advance payment for water rates which it levies.

1190

**COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS**

1191           24.   (a)   The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
1192 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the  
1193 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights  
1194 laws, as well as with their respective implementing regulations and guidelines imposed by the  
1195 U.S. Department of the Interior and/or Bureau of Reclamation.

1196           (b)   These statutes require that no person in the United States shall, on the  
1197 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be  
1198 denied the benefits of, or be otherwise subjected to discrimination under any program or activity  
1199 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the  
1200 Contractor agrees to immediately take any measures necessary to implement this obligation,  
1201 including permitting officials of the United States to inspect premises, programs, and documents.

1202           (c)   The Contractor makes this agreement in consideration of and for the  
1203 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other  
1204 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of  
1205 Reclamation, including installment payments after such date on account of arrangements for  
1206 Federal financial assistance which were approved before such date. The Contractor recognizes  
1207 and agrees that such Federal assistance will be extended in reliance on the representations and  
1208 agreements made in this Article, and that the United States reserves the right to seek judicial  
1209 enforcement thereof.

1210

**PRIVACY ACT COMPLIANCE**

1211           25.   Omitted.

1212

**CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS**

1213           26.   In addition to all other payments to be made by the Contractor pursuant to this  
1214 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a  
1215 bill and detailed statement submitted by the Contracting Officer to the Contractor for such  
1216 specific items of direct cost incurred by the United States for work requested by the Contractor  
1217 associated with this Contract plus indirect costs in accordance with applicable Bureau of  
1218 Reclamation policies and procedures. All such amounts referred to in this Article of this

1219 Contract shall not exceed the amount agreed to in writing in advance by the Contractor. This  
1220 Article of this Contract shall not apply to costs for routine contract administration.

1221 WATER CONSERVATION

1222 27. (a) Prior to the delivery of water provided from or conveyed through  
1223 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor  
1224 shall be implementing an effective water conservation and efficiency program based on the  
1225 Contractor's water conservation plan that has been determined by the Contracting Officer to  
1226 meet the conservation and efficiency criteria for evaluating water conservation plans established  
1227 under Federal law. The water conservation and efficiency program shall contain definite water  
1228 conservation objectives, appropriate economically feasible water conservation measures, and  
1229 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this  
1230 Contract shall be contingent upon the Contractor's continued implementation of such water  
1231 conservation program. In the event the Contractor's water conservation plan or any revised  
1232 water conservation plan completed pursuant to subdivision (d) of this Article of this Contract  
1233 have not yet been determined by the Contracting Officer to meet such criteria, due to  
1234 circumstances which the Contracting Officer determines are beyond the control of the  
1235 Contractor, water deliveries shall be made under this Contract so long as the Contractor  
1236 diligently works with the Contracting Officer to obtain such determination at the earliest  
1237 practicable date, and thereafter the Contractor immediately begins implementing its water  
1238 conservation and efficiency program in accordance with the time schedules therein.

1239 (b) Should the amount of M&I Water Delivered pursuant to subdivision (a) of  
1240 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the

1241 Contractor shall implement the Best Management Practices identified by the time frames issued  
1242 by the California Urban Water Conservation Council for such M&I Water unless any such  
1243 practice is determined by the Contracting Officer to be inappropriate for the Contractor.

1244 (c) The Contractor shall submit to the Contracting Officer a report on the  
1245 status of its implementation of the water conservation plan on the reporting dates specified in the  
1246 then-existing conservation and efficiency criteria established under Federal law.

1247 (d) At five (5) -year intervals, the Contractor shall revise its water  
1248 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating  
1249 water conservation plans established under Federal law and submit such revised water  
1250 management plan to the Contracting Officer for review and evaluation. The Contracting Officer  
1251 will then determine if the water conservation plan meets Reclamation's then-existing  
1252 conservation and efficiency criteria for evaluating water conservation plans established under  
1253 Federal law.

1254 (e) If the Contractor is engaged in direct groundwater recharge, such activity  
1255 shall be described in the Contractor's water conservation plan.

1256 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1257 28. Except as specifically provided in Article 18 of this Contract, the provisions of  
1258 this Contract shall not be applicable to or affect non-project water or water rights now owned or  
1259 hereafter acquired by the Contractor or any user of such water within the Contractor's Service  
1260 Area. Any such water shall not be considered Project Water under this Contract. In addition,  
1261 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or

1262 any water user within the Contractor's Service Area acquires or has available under any other  
1263 contract pursuant to Federal Reclamation law.

1264 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1265 29. (a) The O&M of a portion of the Project facilities which serve the Contractor,  
1266 and responsibility for funding a portion of the costs of such O&M, have been transferred to the  
1267 Operating Non-Federal Entity by separate agreement between the United States and the  
1268 Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the  
1269 rights or obligations of the Contractor or the United States hereunder.

1270 (b) The Contracting Officer has previously notified the Contractor in writing  
1271 that the O&M of a portion of the Project facilities which serve the Contractor has been  
1272 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly  
1273 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer  
1274 under the terms and conditions of the separate agreement between the United States and the  
1275 Operating Non-Federal Entity described in subdivision (a) of this Article of this Contract, all  
1276 rates, charges or assessments of any kind, including any assessment for reserve funds, which the  
1277 Operating Non-Federal Entity or such successor determines, sets or establishes for (i) the O&M  
1278 of the portion of the Project facilities operated and maintained by the Operating Non-Federal  
1279 Entity or such successor, or (ii) the Friant Division's share of the operation, maintenance and  
1280 replacement costs for physical works and appurtenances associated with the Tracy Pumping  
1281 Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal share of the  
1282 O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use conveyance  
1283 and conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity

1284 or such successor shall not relieve the Contractor of its obligation to pay directly to the United  
1285 States the Contractor's share of the Project Rates, Charges, and Tiered Pricing Components  
1286 except to the extent the Operating Non-Federal Entity collects payments on behalf of the United  
1287 States in accordance with the separate agreement identified in subdivision (a) of this Article of  
1288 this Contract.

1289 (c) For so long as the O&M of any portion of the Project facilities serving the  
1290 Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the  
1291 Contracting Officer shall adjust those components of the Rates for Water Delivered under this  
1292 Contract representing the cost associated with the activity being performed by the Operating  
1293 Non-Federal Entity or its successor.

1294 (d) In the event the O&M of the Project facilities operated and maintained by  
1295 the Operating Non-Federal Entity is re-assumed by the United States during the term of this  
1296 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the  
1297 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the  
1298 Contractor for Project Water under this Contract representing the O&M costs of the portion of  
1299 such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the  
1300 absence of written notification from the Contracting Officer to the contrary, pay the Rates,  
1301 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the  
1302 United States in compliance with Article 7 of this Contract.

1303 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1304 30. The expenditure or advance of any money or the performance of any obligation of  
1305 the United States under this Contract shall be contingent upon appropriation or allotment of  
1306 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any

1307 obligations under this Contract. No liability shall accrue to the United States in case funds are  
1308 not appropriated or allotted.

1309 BOOKS, RECORDS, AND REPORTS

1310 31. (a) The Contractor shall establish and maintain accounts and other books and  
1311 records pertaining to administration of the terms and conditions of this Contract, including: the  
1312 Contractor's financial transactions, water supply data, and Project land and right-of-way  
1313 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use  
1314 data; and other matters that the Contracting Officer may require. Reports thereon shall be  
1315 furnished to the Contracting Officer in such form and on such date or dates as the Contracting  
1316 Officer may require. Subject to applicable Federal laws and regulations, each party to this  
1317 Contract shall have the right during office hours to examine and make copies of the other party's  
1318 books and records relating to matters covered by this Contract.

1319 (b) Notwithstanding the provisions of subdivision (a) of this Article of this  
1320 Contract, no books, records, or other information shall be requested from the Contractor by the  
1321 Contracting Officer unless such books, records, or information are reasonably related to the  
1322 administration or performance of this Contract. Any such request shall allow the Contractor a  
1323 reasonable period of time within which to provide the requested books, records, or information.

1324 (c) At such time as the Contractor provides information to the Contracting  
1325 Officer pursuant to subdivision (a) of this Article of this Contract, a copy of such information  
1326 shall be provided to the Operating Non-Federal Entity.

1327 ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

1328 32. (a) The provisions of this Contract shall apply to and bind the successors and  
1329 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1330 therein shall be valid until approved in writing by the Contracting Officer.

1331 (b) The assignment of any right or interest in this Contract by either party  
1332 shall not interfere with the rights or obligations of the other party to this Contract absent the  
1333 written concurrence of said other party.

1334 (c) The Contracting Officer shall not unreasonably condition or withhold  
1335 approval of any proposed assignment.

1336 SEVERABILITY

1337 33. In the event that a person or entity who is neither (i) a party to a Project contract,  
1338 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor  
1339 (iii) an association or other form of organization whose primary function is to represent parties to  
1340 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1341 enforceability of a provision included in this Contract and said person, entity, association, or  
1342 organization obtains a final court decision holding that such provision is legally invalid or  
1343 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),  
1344 the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of  
1345 such final court decision identify by mutual agreement the provisions in this Contract which  
1346 must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate  
1347 revision(s). The time periods specified above may be extended by mutual agreement of the  
1348 parties. Pending the completion of the actions designated above, to the extent it can do so  
1349 without violating any applicable provisions of law, the United States shall continue to make the  
1350 quantities of Project Water specified in this Contract available to the Contractor pursuant to the  
1351 provisions of this Contract which were not found to be legally invalid or unenforceable in the  
1352 final court decision.

1353 RESOLUTION OF DISPUTES

1354 34. Should any dispute arise concerning any provisions of this Contract, or the  
1355 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to

1356 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting  
1357 Officer referring any matter to Department of Justice, the party shall provide to the other party  
1358 thirty (30) days written notice of the intent to take such action; Provided, That such notice shall  
1359 not be required where a delay in commencing an action would prejudice the interests of the party  
1360 that intends to file suit. During the thirty (30) day notice period, the Contractor and the  
1361 Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as  
1362 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the  
1363 Contractor or the United States may have.

1364 OFFICIALS NOT TO BENEFIT

1365 35. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1366 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1367 manner as other water users or landowners.

1368 CHANGES IN CONTRACTOR'S SERVICE AREA

1369 36. (a) While this Contract is in effect, no change may be made in the  
1370 Contractor's Service Area or boundaries, by inclusion or exclusion of lands, dissolution,  
1371 consolidation, merger, or otherwise, except upon the Contracting Officer's written consent.

1372 (b) Within thirty (30) days of receipt of a request for such a change, the  
1373 Contracting Officer will notify the Contractor of any additional information required by the  
1374 Contracting Officer for processing said request, and both parties will meet to establish a mutually  
1375 agreeable schedule for timely completion of the process. Such process will analyze whether the  
1376 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this  
1377 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this  
1378 Contract or to pay for any Federally-constructed facilities for which the Contractor is  
1379 responsible; and (iii) have an impact on any Project Water rights applications, permits, or

1380 licenses. In addition, the Contracting Officer shall comply with the National Environmental  
1381 Policy Act and the Endangered Species Act. The Contractor will be responsible for all costs  
1382 incurred by the Contracting Officer in this process, and such costs will be paid in accordance  
1383 with Article 26 of this Contract.

1384 FEDERAL LAWS

1385 37. By entering into this Contract, the Contractor does not waive its rights to contest  
1386 the validity or application in connection with the performance of the terms and conditions of this  
1387 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with  
1388 the terms and conditions of this Contract unless and until relief from application of such Federal  
1389 law or regulation to the implementing provision of the Contract is granted by a court of  
1390 competent jurisdiction.

1391 EMERGENCY RESERVE FUND

1392 38. The Contractor and Contracting Officer acknowledge that the requirements to  
1393 establish and maintain a minimum reserve fund account to finance extraordinary O&M costs of  
1394 Friant Division Facilities is and will continue to be administered under Contract No.  
1395 8-07-20-X0356 titled Agreement To Transfer The Operation, Maintenance And Replacement  
1396 And Certain Financial And Administrative Activities Related To The Friant-Kern Canal And  
1397 Associated Works, dated March 1, 1998 as amended, supplemented, assigned, or renewed.

1398 MEDIUM FOR TRANSMITTING PAYMENT

1399 39. (a) All payments from the Contractor to the United States under this contract  
1400 shall be by the medium requested by the United States on or before the date payment is due. The  
1401 required method of payment may include checks, wire transfers, or other types of payment  
1402 specified by the United States.

1403 (b) Upon execution of the contract, the Contractor shall furnish the  
1404 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose  
1405 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising  
1406 out of the Contractor's relationship with the United States.

1407 NOTICES

1408 40. Any notice, demand, or request authorized or required by this Contract shall be  
1409 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
1410 delivered to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno,  
1411 California 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered  
1412 to the City of Fresno, Public Utilities Director, 2600 Fresno Street, Room 3065, Fresno,  
1413 California 93721-3624. The designation of the addressee or the address may be changed by  
1414 notice given in the same manner as provided in this Article of this Contract for other notices.

1415 CONFIRMATION OF CONTRACT

1416 41. The Contractor, after the execution of this Contract, shall promptly provide to the  
1417 Contracting Officer a decree of a court of competent jurisdiction of the State of California,  
1418 confirming the execution of this Contract. The Contractor shall furnish the United States a  
1419 certified copy of the final decree, the validation proceedings, and all pertinent supporting records  
1420 of the court approving and confirming this Contract, and decreeing and adjudging it to be lawful,  
1421 valid, and binding on the Contractor.

1422 CONTRACT DRAFTING CONSIDERATIONS

1423 42. Articles 1 through 7, Articles 9 through 13, subdivision (c) of Article 16, Articles  
1424 18 through 20, subdivision (c) of Article 23, Articles 26 through 29, subdivisions (b) and (c) of  
1425 Article 31, subdivisions (b) and (c) of Article 32, Articles 33 through 34, subdivision (b) of  
1426 Article 36, and Articles 37 through 38 of this Contract have been drafted, negotiated, and  
1427 reviewed by the parties hereto, each of whom is sophisticated in the matters to which this  
1428 Contract pertains, and no one party shall be considered to have drafted the stated Articles.

1429 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day  
1430 and year first above written.

APPROVED AS TO LEGAL  
FORM AND SUFFICIENCY  
*James E. Turner*  
OFFICE OF REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR

THE UNITED STATES OF AMERICA

By: *Donald R. Hanson*  
Regional Director, Mid-Pacific Region  
Bureau of Reclamation

CITY OF FRESNO

By: *Mark Scott*  
City Manager 12/13/10

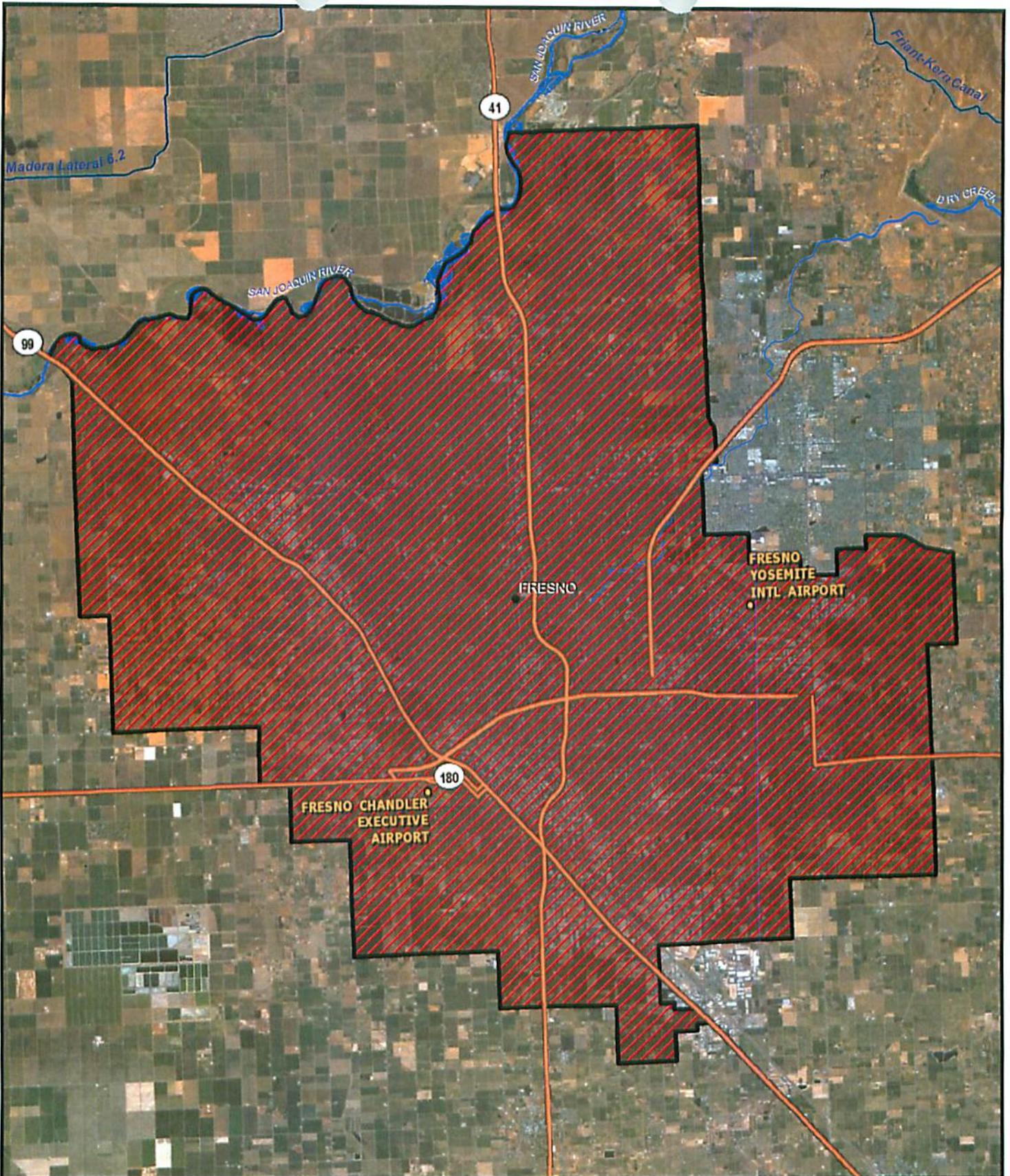
By: *[Signature]*  
Public Utilities Director

Attest:

By: *Rebecca E. Klusil*  
City Clerk 12-14-10

Approved as to form:

By: *[Signature]*  
City Attorney

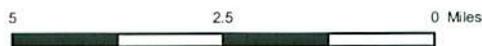


-  District Boundary
-  Contractor's Service Area (Irrigation Only)
-  Contractor's Service Area (Irrigation and M&I)

**City of Fresno**  
 Contract No. 14-06-200-8901D  
 Exhibit A  
 Friant 9 (d) Repayment



Date: September 1, 2010  
 File Name: N:\Districts\Contracts\Friant\_9(d)\Contracts\CityOfFresno.mxd



1785-202-60

**EXHIBIT B**

**Rates and Charges**

This is a placeholder page. The Rates and Charges will be transmitted to the Contractor at a later date.

**Exhibit C-1**  
 Repayment Obligation - Lump Sum Option

Friant Contractor: City of Fresno  
 San Joaquin River Restoration Act

**Existing Capital Obligation (Article 1(m))** \$ 15,663,060.20

Irrigation portion of Existing Capital Obligation \$ -

20yr CMT as of : 10/01/10 3.400%

Discount Rate (1/2 20yr CMT) 1.700%

**Discounted Irrigation Capital** \$ -

Non-Discounted M&I Portion of Existing Capital Obligation \$ 15,663,060.20

**Repayment Obligation - Lump Sum Option (per Article 7(a)(2)(A))** \$ 15,663,060.20

Year	Irrigation Portion of Allocated Capital Cost	
	Beginning Balance	Straight Line Repayment
	2011	\$ -
2012	\$ -	\$ -
2013	\$ -	\$ -
2014	\$ -	\$ -
2015	\$ -	\$ -
2016	\$ -	\$ -
2017	\$ -	\$ -
2018	\$ -	\$ -
2019	\$ -	\$ -
2020	\$ -	\$ -
2021	\$ -	\$ -
2022	\$ -	\$ -
2023	\$ -	\$ -
2024	\$ -	\$ -
2025	\$ -	\$ -
2026	\$ -	\$ -
2027	\$ -	\$ -
2028	\$ -	\$ -
2029	\$ -	\$ -
2030	\$ -	\$ -
		<u>\$ -</u>

**Exhibit D**  
Friant Surcharge Reduction Calculation

**Friant Contractor:**  
**San Joaquin River Restoration Act**

City of Fresno

Average Annual Delivery - Forecasted for 2020-2039*	51,000
<b>Total Projected deliveries (over 20 yr period)**</b>	<b>1,020,000</b>
Article 7(c)	1,020,000
20 yr CMT as of 10/1/2010	4.050%
1/2 20 yr CMT as of 10/1/2010	2.025%
Irrigation Portion of Existing Capital Obligation	\$0
NPV at Half CMT (Repayment Obligation)	\$0
NPV at Full CMT	\$0
<b>Financing Cost Offset: <sup>⊗</sup> (Article 7(c)(1))</b>	<b>\$0</b>
NPV of FS Reduction	\$0
Difference between Financing Cost Offset and NPV of FS Reduction	\$0
<b>2020 Other Obligation Credit (FV of difference) (Art. 7(c)(2))***</b>	<b>\$0</b>

Year	Irrigation portion of Allocated Capital Cost			CVPIA Friant	Reduction in Friant Surcharge			2020 Other Obligation Credit Calculation (Art. 7(c)(2))
	Beginning Balance	Straight Line Repayment	Surcharge per Acre-Foot Before Reduction	Surcharges	Friant Surcharge Reduction per Article 7(c)(1)	Friant Surcharge due per A/F after Reduction	Projected Total Annual Credit	
2011	\$ -	\$ -	\$7.00			\$7.00	0 \$	-
2012	\$ -	\$ -	\$7.00			\$7.00	0 \$	-
2013	\$ -	\$ -	\$7.00			\$7.00	0 \$	-
2014	\$ -	\$ -	\$7.00			\$7.00	0 \$	-
2015	\$ -	\$ -	\$7.00			\$7.00	0 \$	-
2016	\$ -	\$ -	\$7.00			\$7.00	0 \$	-
2017	\$ -	\$ -	\$7.00			\$7.00	0 \$	-
2018	\$ -	\$ -	\$7.00			\$7.00	0 \$	-
2019	\$ -	\$ -	\$7.00			\$7.00	0 \$	-
2020	\$ -	\$ -	\$7.00		\$0.00	\$ 7.00	\$0	\$ -
2021	\$ -	\$ -	\$7.00		\$0.00	\$ 7.00	0	-
2022	\$ -	\$ -	\$7.00		\$0.00	\$ 7.00	0	-
2023	\$ -	\$ -	\$7.00		\$0.00	\$ 7.00	0	-
2024	\$ -	\$ -	\$7.00		\$0.00	\$ 7.00	0	-
2025	\$ -	\$ -	\$7.00		\$0.00	\$ 7.00	0	-
2026	\$ -	\$ -	\$7.00		\$0.00	\$ 7.00	0	-
2027	\$ -	\$ -	\$7.00		\$0.00	\$ 7.00	0	-
2028	\$ -	\$ -	\$7.00		\$0.00	\$ 7.00	0	-
2029	\$ -	\$ -	\$7.00		\$0.00	\$ 7.00	0	-
2030	\$ -	\$ -	\$7.00		\$0.00	\$ 7.00	0	-
2031			\$7.00		\$0.00	\$ 7.00	0	-
2032			\$7.00		\$0.00	\$ 7.00	0	-
2033			\$7.00		\$0.00	\$ 7.00	0	-
2034			\$7.00		\$0.00	\$ 7.00	0	-
2035			\$7.00		\$0.00	\$ 7.00	0	-
2036			\$7.00		\$0.00	\$ 7.00	0	-
2037			\$7.00		\$0.00	\$ 7.00	0	-
2038			\$7.00		\$0.00	\$ 7.00	0	-
2039			\$7.00		\$0.00	\$ 7.00	0	-
	\$ -						\$0	

**Exhibit D**  
Friant Surcharge Reduction Calculation

**Footnotes**

\* Average annual delivery forecast indicated above is a mutually agreed upon estimate of deliveries during the period 2020-2039 for purposes of calculating the Friant Surcharge reduction and related credits only.

\*\* This figure represents the total cumulative deliveries the reduced surcharge is applicable to, but not beyond 2039. If cumulative actual deliveries exceed this amount prior to 2039, the full Friant Surcharge is applicable to deliveries in excess of this amount.

\*\*\* The difference represents the amount of financing costs that are not offset through the reduced Friant Surcharge computed on this schedule. Pursuant to Section 7(c)(2), this amount shall offset the Contractor's other outstanding or future obligations. After 2020, the contractor's other obligations shall be reduced in the following order to fully offset this amount: 1) Payments or prepayments due for O&M expenses and, to the extent applicable, 2) Additional Capital Obligation.

@ Amount of reduction in Friant Surcharge is computed using FPV of Financing Costs adjusted to Yr 2020. Annual Friant Surcharge reduction to fully offset Financing costs is computed and presented on per a/f basis. Friant surcharge may be reduced up to \$3 per a/f.

Friant Surcharge (FS) Reduction Calculations

FV of Total Financing Cost for Offset	\$	-
Annual Credit Target	\$	-
FS Reduction w/o limit	\$	-
FS Reduction limit	\$	(3.00)

**EXHIBIT E**

**Restated Contract<sup>1</sup>**

M&I Only  
Contract No. 14-06-200-8901D

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Central Valley Project, California

**CONTRACT BETWEEN THE UNITED STATES**  
**AND**  
**CITY OF FRESNO**  
**PROVIDING FOR PROJECT WATER SERVICE FROM**  
**FRIANT DIVISION AND**  
**FOR FACILITIES REPAYMENT**

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<sup>1</sup> Pursuant to subdivision (b) of Article 2 of the Contract to which this exhibit is attached, this Exhibit "E" makes no substantive revisions to the Contract to which it is attached and is prepared solely as a matter of administrative convenience. In this Exhibit "E", references to "Contract" or "this Contract" refers to this Restated Contract.

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1 UNITED STATES  
2 DEPARTMENT OF THE INTERIOR  
3 BUREAU OF RECLAMATION  
4 Central Valley Project, California

5 CONTRACT BETWEEN THE UNITED STATES  
6 AND  
7 CITY OF FRESNO  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM FRIANT DIVISION AND  
10 FACILITIES REPAYMENT

11 THIS CONTRACT, made this 22nd day of December, 2010, is entered  
12 into pursuant to the Act of June 17, 1902, (32 Stat. 388), and acts amendatory or supplementary  
13 thereto, including but not limited to: the Acts of August 26, 1937 (50 Stat. 844), as amended and  
14 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, June 21, 1963 (77  
15 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat. 3050), as amended, Title  
16 XXXIV of the Act of October 30, 1992 (106 Stat. 4706), and Title X, Subtitle A, of the Act of  
17 March 30, 2009 (123 Stat. 1349), also referred to as the San Joaquin River Restoration  
18 Settlement Act hereinafter referred to as SJRRSA, all collectively hereinafter referred to as  
19 Federal Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred  
20 to as the United States and the CITY OF FRESNO, hereinafter referred to as the Contractor, a  
21 public agency of the State of California, duly organized, existing, and acting pursuant to the laws  
22 thereof, with its principal place of business in California;

23 WITNESSETH, That

24 EXPLANATORY RECITALS

25 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
26 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood  
27 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and

28 restoration, generation and distribution of electric energy, salinity control, navigation and other  
29 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and  
30 the San Joaquin River and their tributaries; and

31 [2<sup>nd</sup>] WHEREAS, the United States constructed Friant Dam (thereby creating Millerton  
32 Lake) and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant  
33 Division Facilities, which will be used in part for the furnishing of water to the Contractor  
34 pursuant to the terms of this Contract; and

35 [3<sup>rd</sup>] WHEREAS, the United States and the Contractor entered into Contract Number  
36 14-06-200-8901 which established terms for the delivery to the Contractor of Project Water from  
37 the Friant Division from March 1, 1966 through February 28, 2006; and

38 [4<sup>th</sup>] WHEREAS, the Contractor and the United States have, pursuant to subsection  
39 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into a  
40 Binding Agreement, identified as Binding Agreement No. 14-06-200-8901-BA, which sets out  
41 the terms pursuant to which the Contractor agreed to renew the existing contract before its  
42 expiration date after completion of the programmatic environmental impact statement, and  
43 subsequently entered into a long-term renewal contract identified as Contract Number  
44 14-06-200-8901-LTR1, which provided for continued water service to Contractor through  
45 February 28, 2045, and is herein referred to as the "Existing Contract"; and

46 [5<sup>th</sup>] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the  
47 United States has acquired water rights and other rights to the flows of the San Joaquin River,  
48 including without limitation the permits issued as the result of Decision 935 by the California  
49 State Water Resource Control Board and the contracts described in subdivision (n) of Article 3  
50 of this Contract, pursuant to which the Contracting Officer develops, diverts, stores and delivers

51 Project Water stored or flowing through Millerton Lake in accordance with State and Federal law  
52 for the benefit of Project Contractors in the Friant Division and for other specified Project  
53 purposes; and

54 [6<sup>th</sup>] WHEREAS, the water supplied to the Contractor pursuant to this Contract is  
55 Project Water developed through the exercise of the rights described in the fifth (5<sup>th</sup>) Explanatory  
56 Recital of this Contract; and

57 [7<sup>th</sup>] WHEREAS, as a result of litigation entitled “Natural Resources Defense Council,  
58 et al. v Kirk Rogers, et al.” No. CIV-S-88-1658LLK/GGH, certain contractors from the Friant  
59 Division entered into a Stipulation of Settlement dated September 13, 2006, (the “Settlement”),  
60 which settlement prescribes a Restoration Goal and a Water Management Goal and which  
61 Settlement was subsequently confirmed and implemented through the SJRRSA; and

62 [8<sup>th</sup>] WHEREAS, the SJRRSA authorizes and directs the Secretary to convert the  
63 Existing Contract to a repayment contract under clause (1) in the proviso to the first sentence of  
64 subsection (c) (hereinafter referred to as subsection (c)(1)) of Section 9 of the Act of August 4,  
65 1939, no later than December 31, 2010, and further directs that such contract shall require the  
66 repayment of the Contractor’s allocated share of construction costs in lump sum payment by  
67 January 31, 2014, which funds will in turn be made available for implementation of the  
68 Settlement and SJRRSA, and which costs otherwise would have been payable through annual  
69 water rates, with full repayment by 2030; and

70 [9<sup>th</sup>] WHEREAS, such repayment of costs will assist the United States with  
71 implementation of actions required under the Settlement and the SJRRSA and provide the  
72 Contractor the benefits provided in Section 10010 of the SJRRSA; and

73 [10<sup>th</sup>] WHEREAS, Section 2 of the Act of June 21, 1963 (1963 Act) provides that if the  
74 other party to any long-term contract for municipal, domestic, or industrial water supply so  
75 requests, The Secretary shall provide in any contract entered into under subsection (c)(1) of  
76 Section 9 of the Act of August 4, 1939 (repayment contract) that such party to the contract  
77 “shall, during the term of the contract and any renewal thereof and subject to fulfillment of all  
78 obligations thereunder, have a first right for the purposes stated in the contract (to which the  
79 holders of any other type of contract for municipal, domestic, or industrial water supply shall be  
80 subordinate) to a stated share or quantity of the project’s water supply available for municipal,  
81 domestic, or industrial use”; and

82 [11<sup>th</sup>] Omitted; and

83 [12<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the  
84 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for  
85 reasonable and beneficial use and/or has demonstrated projected future demand for water use  
86 such that the Contractor has the capability and expects to utilize fully for reasonable and  
87 beneficial use the quantity of Project Water to be made available to it pursuant to this Contract;  
88 and

89 [13<sup>th</sup>] WHEREAS, water obtained from the Central Valley Project has been relied upon  
90 by urban and agricultural areas within California for more than fifty (50) years and is considered  
91 by the Contractor as an essential portion of its water supply; and

92 [14<sup>th</sup>] WHEREAS, the economies of regions within the Central Valley Project,  
93 including the Contractor’s, depend upon the continued availability of water, including water  
94 service from the Central Valley Project; and

95 [15<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and  
96 partnerships to pursue measures to improve water supply, water quality, and reliability of the  
97 Project for all Project purposes; and

98 [16<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
99 provide for reliable Project Water supplies; to control costs of those supplies; to achieve  
100 repayment of the Central Valley Project as required by law; to guard reasonably against Project  
101 Water shortages; to achieve a reasonable balance among competing demands for use of Project  
102 Water; and to comply with all applicable environmental statutes, all consistent with the legal  
103 obligations of the United States relative to the Central Valley Project; and

104 [17<sup>th</sup>] WHEREAS, any time during the Year the Contracting Officer determines that a  
105 need exists to evacuate water from Millerton Lake in order to prevent or minimize spill or to  
106 meet flood control criteria (currently referred to as “uncontrolled season”), taking into  
107 consideration, among other things, anticipated upstream reservoir operations and the most  
108 probable forecast of snowmelt and runoff projections for the upper San Joaquin River, Friant  
109 Division Project Contractors utilize a portion of their undependable Class 2 Water in their  
110 service areas to, among other things, assist in the management and alleviation of groundwater  
111 overdraft in the Friant Division service area, provide opportunities for restoration of the San  
112 Joaquin River below Friant Dam, minimize flooding along the San Joaquin River, encourage  
113 optimal water management, and maximize the reasonable and beneficial use of the water; and

114 [18<sup>th</sup>] WHEREAS, the parties desire and intend that this Contract not provide a  
115 disincentive to the Friant Division Project Contractors continuing to carry out the beneficial  
116 activities set out in the Explanatory Recital immediately above; and

117 [19<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all  
118 of its obligations under the Existing Contract; and

119 [20<sup>th</sup>] WHEREAS, this Contract allows the Contractor to retain a sustainable water  
120 supply, and provides greater certainty regarding the cost and long-term integrity of its Central  
121 Valley Project water supplies.

122 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein  
123 contained, it is hereby mutually agreed by the parties hereto as follows:

124 DEFINITIONS

125 1. When used herein, unless otherwise distinctly expressed or manifestly  
126 incompatible with the intent of the parties as expressed in this Contract, the term:

127 (a) "Additional Capital Obligation" shall mean any additional construction  
128 costs or other capitalized costs incurred after the effective date of this Contract or not reflected in  
129 the Existing Capital Obligation as provided in Section 10010(a)(3)(B) of the SJRRSA and any  
130 amounts payable by Contractor as determined through the final adjustment described and  
131 required by Section 10010(b) of the SJRRSA;

132 (b) "Calendar Year" shall mean the period January 1 through December 31,  
133 both dates inclusive;

134 (c) "Charges" shall mean the payments required by Federal Reclamation law  
135 in addition to the Rates specified in this Contract as determined annually by the Contracting  
136 Officer pursuant to this Contract and consistent with the SJRRSA;

137 (d) "Class 1 Water" shall mean that supply of water stored in or flowing  
138 through Millerton Lake which, subject to the contingencies hereinafter described in Articles 3,

139 12, and 13 of this Contract, will be available for delivery from Millerton Lake and the  
140 Friant-Kern and Madera Canals as a dependable water supply during each Year;

141 (e) "Class 2 Water" shall mean that supply of water which can be made  
142 available subject to the contingencies hereinafter described in Articles 3, 12, and 13 of this  
143 Contract for delivery from Millerton Lake and the Friant-Kern and Madera Canals in addition to  
144 the supply of Class 1 Water. Because of its uncertainty as to availability and time of occurrence,  
145 such water will be undependable in character and will be furnished only if, as, and when it can be  
146 made available as determined by the Contracting Officer;

147 (f) "Condition of Shortage" shall mean a condition respecting the Project  
148 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the  
149 Contract Total;

150 (g) "Contracting Officer" shall mean the Secretary of the Interior's duly  
151 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law  
152 or regulation;

153 (h) "Contract Total" shall mean the maximum amount of Class 1 Water plus  
154 the maximum amount of Class 2 Water specified in subdivision (a) of Article 3 of this Contract  
155 and is the stated share or quantity of the Project's available water supply to which the Contractor  
156 shall have a first right, in accordance with the 1963 Act and the terms of this Contract, upon the  
157 Contractor's complete payment of the Repayment Obligation, notwithstanding any Additional  
158 Capital Obligation that may later be established;

159 (i) "Contractor's Service Area" shall mean the area to which the Contractor is  
160 permitted to provide Project Water under this Contract as described in Exhibit "A" attached

161 hereto, which may be modified from time to time in accordance with Article 36 of this Contract  
162 without amendment of this Contract;

163 (j) "CVPIA" shall mean the Central Valley Project Improvement Act, Title  
164 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

165 (k) Omitted;

166 (l) Omitted;

167 (m) "Existing Capital Obligation" shall mean the remaining amount of  
168 construction costs of the Contractor identified in the Central Valley Project Irrigation Water  
169 Rates and/or Municipal and Industrial Water Rates, respectively, dated January 25, 2007, as  
170 adjusted to reflect payments not reflected in such schedule, pursuant to Section 10010(a)(3)(A)  
171 of the SJRRSA. The Contracting Officer has computed the Existing Capital Obligation in a  
172 manner consistent with the SJRRSA and such amount is set forth in Exhibits "C-1", incorporated  
173 herein by reference;

174 (n) "Financing Costs", for purposes of computing the reduction of certain  
175 charges as specified in subdivision (c) of Article 7 of this Contract, shall mean the difference  
176 between the net present value of the Existing Capital Obligation discounted using the full  
177 Treasury rate and the Existing Capital Obligation discounted using one-half the Treasury rate, as  
178 set forth in Section 10010(d)(3) of the SJRRA;

179 (o) Omitted;

180 (p) Omitted;

181 (q) Omitted;

182 (r) "Irrigation Water" shall mean water made available from the Project that  
183 is used primarily in the production of agricultural crops or livestock, including domestic use  
184 incidental thereto, and watering of livestock;

185 (s) Omitted;

186 (t) "Long Term Historic Average" shall mean the average of the final forecast  
187 of Water Made Available to the Contractor pursuant to this Contract and the contracts referenced  
188 in the third (3<sup>rd</sup>) and fourth (4<sup>th</sup>) Explanatory Recitals of this Contract;

189 (u) "Municipal and Industrial (M&I) Water" shall mean Water Made  
190 Available from the Project other than Irrigation Water made available to the Contractor. M&I  
191 Water shall include water used for human use and purposes such as the watering of landscaping  
192 or pasture for animals (e.g., horses) which are kept for personal enjoyment or water delivered to  
193 land holdings operated in units of less than five (5) acres unless the Contractor establishes to the  
194 satisfaction of the Contracting Officer that the use of water delivered to any such landholding is a  
195 use described in subdivision (r) of this Article of this Contract;

196 (v) Omitted;

197 (w) "Operation and Maintenance" or "O&M" shall mean normal and  
198 reasonable care, control, operation, repair, replacement (other than Capital replacement), and  
199 maintenance of Project facilities;

200 (x) "Operating Non-Federal Entity" shall mean the Friant Water Authority, or  
201 its successor, a Non-Federal entity, which has the obligation to operate and maintain all or a  
202 portion of the Friant Division Facilities pursuant to an agreement with the United States and  
203 which may have funding obligations with respect thereto;

204 (y) Omitted;

205 (z) "Project" shall mean the Central Valley Project owned by the United  
206 States and managed by the Department of the Interior, Bureau of Reclamation;

207 (aa) "Project Contractors" shall mean all parties who have a long-term water  
208 service contract or repayment contract for Project Water from the Project with the United States  
209 pursuant to Federal Reclamation law;

210 (bb) "Project Water" shall mean all water that is developed, diverted, stored, or  
211 delivered by the Secretary in accordance with the statutes authorizing the Project and in  
212 accordance with the terms and conditions of water rights acquired pursuant to California law;

213 (cc) "Rates" shall mean the payments for O&M costs as determined annually  
214 by the Contracting Officer in accordance with the then-existing applicable water ratesetting  
215 policies for the Project, as described in subdivision (a) of Article 7 of this Contract and  
216 illustrated in Exhibit "B", attached hereto;

217 (dd) "Recovered Water Account" shall mean the program, as defined in the  
218 Settlement, to make water available to all of the Friant Division Project Contractors who provide  
219 water to meet interim flows or restoration flows for the purpose of reducing or avoiding the  
220 impact of the interim flows and restoration flows on such contractors;

221 (ee) "Repayment Obligation", as provided in subdivision (a)(2)(A) of Article 7  
222 of this Contract, shall be the Existing Capital Obligation, as defined herein, discounted by  
223 one-half of the Treasury rate and computed consistent with the provisions of Section  
224 10010(a)(3)(A) of the SJRRSA to be paid by January 31, 2014;

225 (ff) "Secretary" shall mean the Secretary of the Interior, a duly appointed  
226 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
227 through any agency of the Department of the Interior;

228 (gg) "Settlement" shall mean the Stipulation of Settlement dated September 13,  
229 2006, the Order Approving Stipulation of Settlement, and the Judgment and further orders issued  
230 by the Court pursuant to the terms and conditions of the Settlement in Natural Resources  
231 Defense Council, et al. v. Rodgers, et al., No. CIV-S-88-1658 LLJ/GGH;

232 (hh) Omitted;

233 (ii) "Water Delivered" or "Delivered Water" shall mean Project Water  
234 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting  
235 Officer;

236 (jj) "Water Made Available" shall mean the estimated amount of Project  
237 Water that can be delivered to the Contractor for the upcoming Year as declared by the  
238 Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

239 (kk) "Water Management Goal" shall mean the goal of the Settlement to  
240 reduce or avoid adverse water supply impacts to all the Friant Division Project Contractors that  
241 may result from the interim flows and restoration flows provided for in the Settlement;

242 (ll) "Water Scheduled" shall mean Project Water made available to the  
243 Contractor for which times and quantities for delivery have been established by the Contractor  
244 and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

245 (mm) "Year" shall mean the period from and including March 1 of each  
246 Calendar Year through the last day of February of the following Calendar Year.

247 EFFECTIVE DATE OF CONTRACT

248 2. (a) This Contract shall become effective on the date first hereinabove written  
249 and shall continue so long as the Contractor is making the annual payments required herein and  
250 paying any other amounts owing under this Contract and applicable law, unless it is terminated

251 by the Contracting Officer by reason of a material uncured breach by the Contractor; Provided,  
252 That the Contracting Officer shall not seek to terminate this Contract by reason of an asserted  
253 material uncured breach by the Contractor unless it has first provided at least sixty (60) days  
254 written notice of the asserted breach to the Contractor and the Contractor has failed to cure such  
255 breach (or to diligently commence curative actions satisfactory to the Contracting Officer for a  
256 breach that cannot be fully cured within sixty (60) days) within the sixty (60)-day notice period;  
257 Provided further, That this Contract may be terminated at any time by mutual consent of the  
258 parties hereto.

259 (b) The Contractor has paid the Repayment Obligation, and notwithstanding  
260 any Additional Capital Obligation that may later be established, the tiered pricing component and  
261 Full Cost pricing provisions of Federal Reclamation law shall no longer be applicable to the  
262 Contractor.

263 (c) This Contract supersedes in its entirety and is intended to replace in full  
264 the Existing Contract; Provided, That if this Contract is terminated or determined to be invalid or  
265 unenforceable for any reason other than a material uncured breach of this Contract by the  
266 Contractor, the Existing Contract shall not be superseded and shall be in full force and effect.

267 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

268 3. (a) During each Year, consistent with all applicable State water rights,  
269 permits, and licenses, Federal law, the Settlement including the SJRRSA, and subject to the  
270 provisions set forth in Articles 12 and 13 of this Contract, the Contracting Officer shall make  
271 available for delivery to the Contractor from the Project 60,000 acre-feet of Class 1 Water for  
272 M&I purposes. The quantity of Water Delivered to the Contractor in accordance with this

273 subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this  
274 Contract.

275 (b) The Contractor has paid the Repayment Obligation, and notwithstanding  
276 any Additional Capital Obligation that may later be established, the Contractor has a first right to  
277 a stated share or quantity of the Project's water supply available for M&I uses in accordance  
278 with the 1963 Act and the terms of this Contract. This right shall not be disturbed so long as the  
279 Contractor fulfills all of its obligations hereunder. The quantity of water made available for  
280 delivery in any given Year shall remain subject to the terms and conditions of subdivision (a) of  
281 this Article of this Contract.

282 (c) The Contractor shall utilize the Project Water in accordance with all  
283 applicable legal requirements.

284 (d) The Contractor shall make reasonable and beneficial use of all Project  
285 Water or other water furnished pursuant to this Contract. Groundwater recharge programs,  
286 groundwater banking programs, surface water storage programs, and other similar programs  
287 utilizing Project Water or other water furnished pursuant to this Contract conducted within the  
288 Contractor's Service Area which are consistent with applicable State law and result in use  
289 consistent with applicable Federal Reclamation law will be allowed; Provided, That any direct  
290 recharge program(s) is (are) described in the Contractor's Water Conservation Plan submitted  
291 pursuant to Article 27 of this Contract; Provided further, That such Water Conservation Plan  
292 demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a  
293 long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such  
294 uses and in compliance with Federal Reclamation law. Groundwater recharge programs,  
295 groundwater banking programs, surface water storage programs, and other similar programs

296 utilizing Project Water or other water furnished pursuant to this Contract conducted outside the  
297 Contractor's Service Area may be permitted upon written approval of the Contracting Officer,  
298 which approval will be based upon environmental documentation, Project Water rights, and  
299 Project operational concerns. The Contracting Officer will address such concerns in regulations,  
300 policies, or guidelines.

301 (e) The Contractor, through this Contract, shall comply with requirements  
302 applicable to the Contractor in biological opinion(s) prepared as a result of the consultation  
303 regarding the execution of the Existing Contract undertaken pursuant to Section 7 of the  
304 Endangered Species Act of 1973, as amended, as well as the requirements of any other biological  
305 opinions applicable to Project Water delivery under this Contract, that are within the  
306 Contractor's legal authority to implement. The Existing Contract, which evidences in excess of  
307 44 years of diversions for M&I purposes of the quantities of water provided in subdivisions (a)  
308 of Article 3 of this Contract, will be considered in developing an appropriate baseline for the  
309 biological assessment(s) prepared pursuant to the ESA, and any other needed environmental  
310 review. The Contractor shall comply with the limitations or requirements imposed by  
311 environmental documentation applicable to the Contractor and within its legal authority to  
312 implement regarding specific activities. Nothing herein shall be construed to prevent the  
313 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with  
314 respect to any biological opinion or other environmental documentation referred to in this Article  
315 of this Contract.

316 (f) Subject to subdivisions (l) and (n) of this Article of this Contract,  
317 following the declaration of Water Made Available under Article 4 of this Contract, the  
318 Contracting Officer will make a determination whether Project Water, or other water available to

319 the Project, can be made available to the Contractor in addition to the Contract Total in this  
320 Article of this Contract during the Year without adversely impacting the Project or other Project  
321 Contractors and consistent with the Secretary's legal obligations. At the request of the  
322 Contractor, the Contracting Officer will consult with the Contractor prior to making such a  
323 determination. Subject to subdivisions (l) and (n) of this Article of this Contract, if the  
324 Contracting Officer determines that Project Water, or other water available to the Project, can be  
325 made available to the Contractor, the Contracting Officer will announce the availability of such  
326 water and shall so notify the Contractor as soon as practical. The Contracting Officer will  
327 thereafter meet with the Contractor and other Project Contractors capable of taking such water to  
328 determine the most equitable and efficient allocation of such water. If the Contractor requests  
329 the delivery of any quantity of such water, the Contracting Officer shall make such water  
330 available to the Contractor in accordance with applicable statutes, regulations, guidelines, and  
331 policies.

332 (g) The Contractor may request permission to reschedule for use during the  
333 subsequent Year some or all of the Water Made Available to the Contractor during the current  
334 Year referred to as "carryover." The Contractor may request permission to use during the  
335 current Year a quantity of Project Water which may be made available by the United States to  
336 the Contractor during the subsequent Year referred to as "pre-use." The Contracting Officer's  
337 written approval may permit such uses in accordance with applicable statutes, regulations,  
338 guidelines, and policies.

339 (h) The Contractor's right pursuant to Federal Reclamation law and applicable  
340 State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract  
341 shall not be disturbed so long as the Contractor shall fulfill all of its obligations under this

342 Contract. Nothing in the preceding sentence shall affect the Contracting Officer's ability to  
343 impose shortages under Article 12 or subdivision (b) of Article 13 of this Contract.

344 (i) Project Water furnished to the Contractor pursuant to this Contract may be  
345 delivered for purposes other than those described in subdivisions (r) and (u) of Article 1 of this  
346 Contract upon written approval by the Contracting Officer in accordance with the terms and  
347 conditions of such approval.

348 (j) The Contracting Officer shall make reasonable efforts to protect the water  
349 rights and other rights described in the fifth (5th) Explanatory Recital of this Contract and to  
350 provide the water available under this Contract. The Contracting Officer shall not object to  
351 participation by the Contractor, in the capacity and to the extent permitted by law, in  
352 administrative proceedings related to the water rights and other rights described in the fifth (5th)  
353 Explanatory Recital of this Contract; Provided however, That the Contracting Officer retains the  
354 right to object to the substance of the Contractor's position in such a proceeding. Provided  
355 further, that in such proceedings the Contracting Officer shall recognize the Contractor has a  
356 legal right under the terms of this Contract to use Project Water.

357 (k) Project Water furnished to the Contractor during any month designated in  
358 a schedule or revised schedule submitted by the Contractor and approved by the Contracting  
359 Officer shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent  
360 that Class 1 Water is called for in such schedule for such month and shall be deemed to have  
361 been accepted as Class 2 Water to the extent Class 2 Water is called for in such schedule for such  
362 month. If in any month the Contractor diverts a quantity of water in addition to the total amount  
363 of Class 1 Water and Class 2 Water set forth in the Contractor's approved schedule or revised  
364 schedule for such month, such additional diversions shall be charged first against the

365 Contractor's remaining Class 2 Water supply available in the current Year. To the extent the  
366 Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to  
367 account for such additional diversions, such additional diversions shall be charged against the  
368 Contractor's remaining Class 1 Water supply available in the current Year. To the extent the  
369 Contractor's remaining Class 1 Water and Class 2 Water supplies available in the current Year  
370 are not sufficient to account for such additional diversions, such additional diversions shall be  
371 charged first against the Contractor's available Class 2 Water supply and then against the  
372 Contractor's available Class 1 Water supply, both for the following Year. Payment for all  
373 additional diversions of water shall be made in accordance with Article 7 of this Contract.

374 (l) If the Contracting Officer determines there is a Project Water supply  
375 available at Friant Dam as the result of an unusually large water supply not otherwise storable for  
376 Project purposes or infrequent and otherwise unmanaged flood flows of short duration, such  
377 water will be made available to the Contractor and others under Section 215 of the Act of  
378 October 12, 1982, pursuant to the priorities specified below if the Contractor enters into a  
379 temporary contract with the United States not to exceed one (1) year for the delivery of such  
380 water or as otherwise provided for in Federal Reclamation law and associated regulations. Such  
381 water may be identified by the Contractor either (i) as additional water to supplement the supply  
382 of Class 1 Water and/or Class 2 Water made available to it pursuant to this Contract or, (ii) upon  
383 written notification to the Contracting Officer, as water to be credited against the Contractor's  
384 Class 2 Water supply available pursuant to this Contract. The Contracting Officer shall make  
385 water determined to be available pursuant to this subsection according to the following priorities:  
386 first, to contractors for Class 1 Water and/or Class 2 Water within the Friant Division; second, to  
387 contractors in the Cross Valley Division of the Project. The Contracting Officer will consider

388 requests from other parties for Section 215 Water for use within the area identified as the Friant  
389 Division service area in the environmental assessment developed in connection with the  
390 execution of the Existing Contract.

391 (m) Nothing in this Contract, nor any action or inaction of the Contractor or  
392 Contracting Officer in connection with the implementation of this Contract, is intended to  
393 override, modify, supersede or otherwise interfere with any term or condition of the water rights  
394 and other rights referred in the fifth (5th) Explanatory Recital of this Contract.

395 (n) The rights of the Contractor under this Contract are subject to the terms of  
396 the contract for exchange waters, dated July 27, 1939, between the United States and the San  
397 Joaquin and Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred  
398 to as the Exchange Contractors), Contract No. 11r-1144, as amended. The United States agrees  
399 that it will not deliver to the Exchange Contractors thereunder waters of the San Joaquin River  
400 unless and until required by the terms of said contract, and the United States further agrees that it  
401 will not voluntarily and knowingly determine itself unable to deliver to the Exchange  
402 Contractors entitled thereto from water that is available or that may become available to it from  
403 the Sacramento River and its tributaries or the Sacramento-San Joaquin Delta those quantities  
404 required to satisfy the obligations of the United States under said Exchange Contract and under  
405 Schedule 2 of the Contract for Purchase of Miller and Lux Water Rights (Contract 11r-1145,  
406 dated July 27, 1939).

407 (o) Pursuant to and consistent with section 10004 of SJRRSA and Paragraph  
408 16 of the Settlement, the Contracting Officer is required to develop and implement a plan for  
409 recirculation, recapture, reuse, exchange or transfer of water released for restoration flows or  
410 interim flows, as those terms are defined in the Settlement, to reduce or avoid impacts to water

411 deliveries caused by said restoration flows or interim flows and water developed through such  
412 activities may be made available (i) to the Contractor without the need of an additional contract,  
413 and/or (ii) to others on behalf of the Contractor under terms mutually acceptable to the  
414 Contractor and the Contracting Officer that are consistent with the Water Management Goal.

415 TIME FOR DELIVERY OF WATER

416 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer  
417 shall announce the Contracting Officer's initial declaration of the Water Made Available. The  
418 declaration will be updated monthly and more frequently if necessary, based on then-current  
419 operational and hydrologic conditions and a new declaration with changes, if any, to the Water  
420 Made Available will be made. The Contracting Officer shall provide forecasts of Project  
421 operations and the basis of the estimate, with relevant supporting information, upon the written  
422 request of the Contractor. Concurrently with the declaration of the Water Made Available, the  
423 Contracting Officer shall provide the Contractor with the updated Long Term Historic Average.  
424 The declaration of Project operations will be expressed in terms of both Water Made Available  
425 and the Long Term Historic Average.

426 (b) On or before each March 1 and at such other times as necessary, the  
427 Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the  
428 Contracting Officer, showing the monthly quantities of Project Water to be delivered by the  
429 United States to the Contractor pursuant to this Contract for the Year commencing on such  
430 March 1. The Contracting Officer shall use all reasonable means to deliver Project Water  
431 according to the approved schedule for the Year commencing on such March 1.

432 (c) The Contractor shall not schedule Project Water in excess of the quantity  
433 of Project Water the Contractor intends to put to reasonable and beneficial use within the

434 Contractor's Service Area, or to sell, transfer or exchange pursuant to Article 10 of this Contract  
435 or bank pursuant to subdivision (d) of Article 3 of this Contract during any Year.

436 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this  
437 Contract, the United States shall deliver Project Water to the Contractor in accordance with the  
438 initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any  
439 written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable  
440 time prior to the date(s) on which the requested change(s) is/are to be implemented; Provided,  
441 That the total amount of water requested in that schedule or revision does not exceed the  
442 quantities announced by the Contracting Officer pursuant to the provisions of subdivision (a) of  
443 Article 3 of this Contract, and the Contracting Officer determines that there will be sufficient  
444 capacity available in the appropriate Friant Division Facilities to deliver the water in accordance  
445 with that schedule; Provided further, That the Contractor shall not schedule the delivery of any  
446 water during any period as to which the Contractor is notified by the Contracting Officer or  
447 Operating Non-Federal Entity that Project facilities required to make deliveries to the Contractor  
448 will not be in operation because of scheduled O&M.

449 (e) The Contractor may, during the period from and including November 1 of  
450 each Year through and including the last day of February of that Year, request delivery of any  
451 amount of the Class 1 Water estimated by the Contracting Officer to be made available to it  
452 during the following Year. The Contractor may, during the period from and including January 1  
453 of each Year (or such earlier date as may be determined by the Contracting Officer) through and  
454 including the last day of February of that Year, request delivery of any amount of Class 2 Water  
455 estimated by the Contracting Officer to be made available to it during the following Year. Such  
456 water shall hereinafter be referred to as pre-use water. Such request must be submitted in writing

457 by the Contractor for a specified quantity of pre-use and shall be subject to the approval of the  
458 Contracting Officer. Payment for pre-use water so requested shall be at the appropriate Rate(s)  
459 for the following Year in accordance with Article 7 of this Contract and shall be made in  
460 advance of delivery of any pre-use water. The Contracting Officer shall deliver such pre-use  
461 water in accordance with a schedule or any revision thereof submitted by the Contractor and  
462 approved by the Contracting Officer, to the extent such water is available and to the extent such  
463 deliveries will not interfere with the delivery of Project Water entitlements to other Friant  
464 Division contractors or the physical maintenance of the Project facilities. The quantities of  
465 pre-use Water Delivered pursuant to this subdivision shall be deducted from the quantities of  
466 water that the Contracting Officer would otherwise be obligated to make available to the  
467 Contractor during the following Year; Provided, That the quantity of pre-use water to be  
468 deducted from the quantities of either Class 1 Water or Class 2 Water to be made available to the  
469 Contractor in the following Year shall be specified by the Contractor at the time the pre-use  
470 water is requested or as revised in its first schedule for the following Year submitted in  
471 accordance with subdivision (b) of this Article of this Contract, based on the availability of the  
472 following Year water supplies as determined by the Contracting Officer.

473 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

474 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this  
475 Contract shall be delivered to the Contractor at a point or points of delivery either on Project  
476 facilities or another location or locations mutually agreed to in writing by the Contracting Officer  
477 and the Contractor.

478 (b) The Contracting Officer, the Operating Non-Federal Entity, or other  
479 appropriate entity shall make all reasonable efforts to maintain sufficient flows and levels of

480 water in the Friant-Kern Canal to deliver Project Water to the Contractor at specific turnouts  
481 established pursuant to subdivision (a) of this Article of this Contract.

482 (c) The Contractor shall not deliver Project Water to land outside the  
483 Contractor's Service Area unless approved in advance by the Contracting Officer. The  
484 Contractor shall deliver Project Water in accordance with applicable Federal Reclamation law.

485 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
486 measured and recorded with equipment furnished, installed, operated, and maintained by the  
487 United States, the Operating Non-Federal Entity or other appropriate entity as designated by the  
488 Contracting Officer (hereafter "other appropriate entity") at the point or points of delivery  
489 established pursuant to subdivision (a) of this Article of this Contract. Upon the request of either  
490 party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the  
491 responsible Operating Non-Federal Entity, the accuracy of such measurements and shall take any  
492 necessary steps to adjust any errors appearing therein. For any period of time when accurate  
493 measurements have not been made, the Contracting Officer shall consult with the Contractor and  
494 the responsible Operating Non-Federal Entity prior to making a final determination of the  
495 quantity delivered for that period of time.

496 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity  
497 shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project  
498 Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified  
499 in subdivision (a) of this Article of this Contract. The Contractor shall indemnify the United  
500 States, its officers, employees, agents, and assigns on account of damage or claim of damage of  
501 any nature whatsoever for which there is legal responsibility, including property damage,  
502 personal injury, or death arising out of or connected with the control, carriage, handling, use,

503 disposal, or distribution of such Project Water beyond such delivery points, except for any  
504 damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its  
505 officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity,  
506 with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct  
507 of the Contracting Officer or any of its officers, employees, agents, or assigns, including any  
508 responsible Operating Non-Federal Entity; (iii) negligence of the Contracting Officer or any of  
509 its officers, employees, agents, or assigns including any responsible Operating Non-Federal  
510 Entity; or (iv) damage or claims resulting from a malfunction of facilities owned and/or operated  
511 by the United States or responsible Operating Non-Federal Entity; Provided, That the Contractor  
512 is not the Operating Non-Federal Entity that owned or operated the malfunctioning facility(ies)  
513 from which the damage claim arose.

514 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

515 6. (a) The Contractor has established a measurement program satisfactory to the  
516 Contracting Officer and all surface water delivered for M&I purposes within the Contractor's  
517 Service Area is measured at each M&I service connection. The water measuring devices or  
518 water measuring methods of comparable effectiveness must be acceptable to the Contracting  
519 Officer. The Contractor shall be responsible for installing, operating, and maintaining and  
520 repairing all such measuring devices and implementing all such water measuring methods at no  
521 cost to the United States. The Contracting Officer acknowledges that the Contractor has a  
522 metering plan (Exhibit "F") setting forth the milestones and schedule that the Contractor will  
523 implement to comply with the requirements of this Article. The Contractor shall provide an  
524 annual written report to the Contracting Officer describing the Contractor's metering plan  
525 implementation progress. The Contractor shall use the information obtained from such water

526 measuring devices or water measuring methods to ensure its proper management of the water, to  
527 bill water users for water delivered by the Contractor; and, if applicable, to record water  
528 delivered for M&I purposes by customer class as defined in the Contractor's water conservation  
529 plan provided for in Article 27 of this Contract. Nothing herein contained, however, shall  
530 preclude the Contractor from establishing and collecting any charges, assessments, or other  
531 revenues authorized by California law.

532 (b) To the extent the information has not otherwise been provided, upon  
533 execution of this Contract, the Contractor shall provide to the Contracting Officer a written  
534 report describing the measurement devices or water measuring methods being used or to be used  
535 to implement subdivision (a) of this Article of this Contract and identifying the M&I service  
536 connections or alternative measurement programs approved by the Contracting Officer, at which  
537 such measurement devices or water measuring methods are being used, and, if applicable,  
538 identifying the locations at which such devices and/or methods are not yet being used including a  
539 time schedule for implementation at such locations. The Contracting Officer shall advise the  
540 Contractor in writing within sixty (60) days as to the adequacy of, and necessary modifications,  
541 if any, of the measuring devices or water measuring methods identified in the Contractor's report  
542 and if the Contracting Officer does not respond in such time, they shall be deemed adequate. If  
543 the Contracting Officer notifies the Contractor that the measuring devices or methods are  
544 inadequate, the parties shall within sixty (60) days following the Contracting Officer's response,  
545 negotiate in good faith the earliest practicable date by which the Contractor shall modify said  
546 measuring devices and/or measuring methods as required by the Contracting Officer to ensure  
547 compliance with subdivision (a) of this Article of this Contract.

548 (c) All new surface water delivery systems installed within the Contractor's  
549 Service Area after the effective date of this Contract shall also comply with the measurement  
550 provisions described in subdivision (a) of this Article of this Contract.

551 (d) The Contractor shall inform the Contracting Officer and the State of  
552 California in writing by April 30 of each Year of the monthly volume of surface water delivered  
553 within the Contractor's Service Area during the previous Year.

554 (e) The Contractor shall inform the Contracting Officer and the Operating  
555 Non-Federal Entity on or before the twentieth (20<sup>th</sup>) calendar day of each month of the quantity  
556 of M&I Water taken during the preceding month.

557 (f) Omitted.

558 RATES, METHOD OF PAYMENT FOR WATER,  
559 AND ACCELERATED REPAYMENT OF FACILITIES

560 7. (a) The Contractor's cost obligations for all Delivered Water shall be  
561 determined in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted  
562 in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the  
563 SJRRSA, and such ratesetting policies shall be amended, modified, or superseded only through a  
564 public notice and comment procedure; (ii) applicable Federal Reclamation law and associated  
565 rules and regulations, or policies; and (iii) other applicable provisions of this Contract.

566 (1) The Contractor shall pay the United States as provided for in this  
567 Article of this Contract for the Delivered Water at Rates and Charges determined in accordance  
568 with policies for Irrigation Water and M&I Water. The Contractor's Rates shall be established to  
569 recover its estimated reimbursable costs included in the O&M component of the Rate and  
570 amounts established to recover other charges and deficits, other than the construction costs. The

571 Rates for O&M costs and Charges shall be adjusted, as appropriate, in accordance with the  
572 provisions of the SJRRSA.

573 (2) Omitted.

574 (A) Omitted.

575 (B) Project construction costs or other capitalized costs

576 attributable to capital additions to the Project incurred after the effective date of this Contract or

577 that are not reflected in the schedule referenced in Exhibit "C-1" and properly assignable to the

578 Contractor, shall be repaid as prescribed by the SJRRSA without interest except as required by

579 law. Consistent with Federal Reclamation law, interest shall continue to accrue on the M&I

580 portion of unpaid Project construction costs or other capitalized cost assigned to the Contractor

581 until such costs are paid. Increases or decreases in Project construction costs or other capitalized

582 costs assigned to the Contractor caused solely by annual adjustment of Project construction costs

583 or other capitalized costs assigned to each Central Valley Project contractor by the Secretary

584 shall not be considered in determining the amounts to be paid pursuant to this subdivision

585 (a)(2)(B), but will be considered under subdivision (b) of this Article. A separate repayment

586 agreement shall be established by the Contractor and the Contracting Officer to accomplish

587 repayment of all additional Project construction costs or other capitalized costs assigned to the

588 Contractor within the timeframe prescribed by the SJRRSA subject to the following:

589 (1) If the collective annual Project construction costs or

590 other capitalized costs that are incurred after the effective date of this Contract and properly

591 assignable to the contractors are less than \$5,000,000, then the portion of such costs properly

592 assignable to the Contractor shall be repaid in not more than five (5) years after notification of

593 the allocation. This amount is the result of a collective annual allocation of Project construction

594 costs to the contractors exercising contract conversions; Provided, That the reference to the  
595 amount of \$5,000,000 shall not be a precedent in any other context.

596 (2) If the collective annual Project construction costs or  
597 other capitalized costs that are incurred after the effective date of this Contract and properly  
598 assignable to the contractors are \$5,000,000 or greater, then the portion of such costs properly  
599 assignable to the Contractor shall be repaid as provided by applicable Federal Reclamation law.  
600 This amount is the result of a collective annual allocation of Project construction costs to the  
601 contractors exercising contract conversions; Provided, That the reference to the amount of  
602 \$5,000,000 shall not be a precedent in any other context.

603 (b) Consistent with Section 10010(b) of the SJRRSA, following a final cost  
604 allocation by the Secretary upon completion of the construction of the Central Valley Project, the  
605 amounts paid by the Contractor shall be subject to adjustment to reflect the effect of any  
606 reallocation of Project construction costs or other capitalized costs assigned to the Contractor  
607 that may have occurred between the determination of Contractor's Existing Capital Obligation  
608 and the final cost allocation. In the event that the final cost allocation, as determined by the  
609 Secretary, indicates that the costs properly assignable to the Contractor, as determined by the  
610 Contracting Officer, are greater than the Existing Capital Obligation and other amounts of  
611 Project construction costs or other capitalized costs paid by the Contractor, then the Contractor  
612 shall be obligated to pay the remaining allocated costs. The term of such additional repayment  
613 contract shall be no less than one (1) year and no more than ten (10) years, however, mutually  
614 agreeable provisions regarding the rate of repayment of such amount may be developed by the  
615 parties. In the event that the final cost allocation, as determined by the Secretary, indicates that  
616 the costs properly assignable to the Contractor, as determined by the Contracting Officer, are less

617 than the Existing Capital Obligation and other amounts of Project construction costs or other  
618 capitalized costs paid by the Contractor, then the Contracting Officer shall credit such  
619 overpayment as an offset against any outstanding or future obligation of the Contractor,  
620 consistent with the SJRRSA. This Contract shall be implemented in a manner consistent with  
621 Section 10010(f) of the SJRRSA.

622 (c) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
623 provide the Contractor an estimate of the Charges for Project Water that will be applied to the  
624 period October 1, of the current Calendar Year, through September 30, of the following Calendar  
625 Year, and the basis for such estimate. The Contractor shall be allowed not less than two (2)  
626 months to review and comment on such estimates. On or before September 15 of each Calendar  
627 Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect  
628 during the period October 1 of the current Calendar Year, through September 30 of the following  
629 Calendar Year, and such notification shall revise Exhibit "B". Charges shall be subject to  
630 reduction consistent with the SJRRSA based upon the average annual delivery amount agreed to  
631 by the Contracting Officer and the Contractor.

632 (1) For the years 2020 through 2039 inclusive, Charges shall reflect  
633 the reduction on a per acre-foot basis consistent with Section 10010(d)(1) of the SJRRSA.  
634 Exhibit "D" sets forth the reduction in Charges to offset the Financing Costs as prescribed in  
635 Section 10010(d)(1) of the SJRRSA; Provided, That if the Secretary determines such Charges are  
636 otherwise needed, an equivalent reduction will be made to O&M costs consistent with such  
637 provisions of the SJRRSA. Consistent with Section 10010(d)(1) of the SJRRSA and as shown in  
638 Exhibit "D", the Friant Surcharge reduction has been calculated based upon the anticipated  
639 average annual water deliveries, for the purpose of this reduction only, mutually agreed upon by

640 the Secretary and the Contractor for the period from January 1, 2020 through December 31,  
641 2039. The Friant Surcharge reduction shall remain fixed and shall only be applied to Water  
642 Delivered pursuant to this Contract to which the Friant Surcharge applies (including but not  
643 limited to water transferred, banked, or exchanged), commencing on January 1, 2020 until such  
644 volume of Water Delivered equals 1,020,000 acre-feet or December 31, 2039, whichever occurs  
645 first.

646 (2) Further, to fully offset the Financing Costs, Contractor shall be  
647 entitled to a reduction in other outstanding or future obligations of the Contractor in accordance  
648 with Section 10010(d)(2) of the SJRRSA. The amount of such further reduction in outstanding  
649 or future obligations of the Contractor after October 1, 2019 has been computed by the  
650 Contracting Officer, and as computed, such amount is set forth in Exhibit "D".

651 (d) Prior to October 1 of each Calendar Year, the Contracting Officer shall  
652 make available to the Contractor an estimate of the Rates for Project Water for the following  
653 Year and the computations and cost allocations upon which those Rates are based. The  
654 Contractor shall be allowed not less than two (2) months to review and comment on such  
655 computations and cost allocations. By December 31 of each Calendar Year, the Contracting  
656 Officer shall provide the Contractor with the final Rates to be in effect for the upcoming Year,  
657 and such notification shall revise Exhibit "B". The O&M component of the Rate may be  
658 reduced as provided in the SJRRSA.

659 (e) At the time the Contractor submits the initial schedule for the delivery of  
660 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the  
661 Contractor shall make an advance payment to the United States equal to the total amount payable  
662 pursuant to the applicable Rate(s) set under subdivision (a) of this Article of this Contract, for the

663 Project Water scheduled to be delivered pursuant to this Contract during the first two (2)  
664 calendar months of the Year. Before the end of the first month and before the end of each  
665 calendar month thereafter, the Contractor shall make an advance payment to the United States, at  
666 the Rate(s) set under subdivision (a) of this Article of this Contract, for the Water Scheduled to  
667 be delivered pursuant to this Contract during the second month immediately following.

668 Adjustments between advance payments for Water Scheduled and payments at Rates due for  
669 Water Delivered shall be made before the end of the following month; Provided, That any  
670 revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which  
671 increases the amount of Water Delivered pursuant to this Contract during any month shall be  
672 accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project  
673 Water is not delivered to the Contractor in advance of such payment. In any month in which the  
674 quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of  
675 Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered  
676 to the Contractor unless and until an advance payment at the Rates then in effect for such  
677 additional Project Water is made. Final adjustment between the advance payments for the Water  
678 Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this  
679 Contract shall be made as soon as practicable but no later than April 30th of the following Year,  
680 or sixty (60) days after the delivery of Project Water carried over under subdivision (g) of Article  
681 3 of this Contract if such water is not delivered by the last day of February.

682 (f) The Contractor shall also make a payment in addition to the Rate(s) in  
683 subdivision (e) of this Article of this Contract to the United States for Water Delivered, at the  
684 Charges then in effect, before the end of the month following the month of delivery. The  
685 payments shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as

686 shown in the water delivery report for the subject month prepared by the Contracting Officer.  
687 Such water delivery report shall be the basis for payment of Charges by the Contractor, and shall  
688 be provided to the Contractor by the Contracting Officer (as applicable) within five (5) days after  
689 the end of the month of delivery. The water delivery report shall be deemed a bill basis for  
690 payment of Charges for Water Delivered. Adjustment for overpayment or underpayment of  
691 Charges shall be made through the adjustment of payments due to the United States for Charges  
692 for the next month. Any amount to be paid for past due payment of Charges shall be computed  
693 pursuant to Article 21 of this Contract.

694 (g) The Contractor shall pay for any Water Delivered under subdivision (d),  
695 (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to  
696 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting  
697 policies; Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this  
698 Contract shall be no more than the otherwise applicable Rate for Irrigation Water or M&I Water  
699 under subdivision (a) of this Article of this Contract.

700 (h) Payments to be made by the Contractor to the United States under this  
701 Contract may be paid from any revenues available to the Contractor.

702 (i) All revenues received by the United States from the Contractor relating to  
703 the delivery of Project Water or the delivery of non-project water through Project facilities shall  
704 be allocated and applied in accordance with Federal Reclamation law and the associated rules or  
705 regulations, the then-existing Project Ratesetting policies for M&I Water and consistent with the  
706 SJRRSA.

707 (j) The Contracting Officer shall keep its accounts, pertaining to the  
708 administration of the financial terms and conditions of its long-term contracts, in accordance

709 with applicable Federal standards so as to reflect the application of Project costs and revenues.  
710 The Contracting Officer shall, each Year upon request of the Contractor, provide to the  
711 Contractor a detailed accounting of all Project and Contractor expense allocations, the  
712 disposition of all Project and Contractor revenues, and a summary of all water delivery  
713 information. The Contracting Officer and the Contractor shall enter into good faith negotiations  
714 to resolve any discrepancies or disputes relating to accountings, reports, or information.

715 (k) The parties acknowledge and agree that the efficient administration of this  
716 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
717 policies, and procedures used for establishing Rates, Charges, and/or for making and allocating  
718 payments, other than those set forth in this Article of this Contract, may be in the mutual best  
719 interest of the parties, it is expressly agreed that the parties may enter into agreements to modify  
720 the mechanisms, policies, and procedures for any of those purposes while this Contract is in  
721 effect without amending this Contract.

722 (l) (1) Omitted.

723 (2) Omitted.

724 (3) Omitted.

725 (m) Rates under the respective ratesetting policies will be established to  
726 recover only reimbursable O&M (including any deficits) costs of the Project, as those terms are  
727 used in the then-existing Project ratesetting policies, and consistent with the SJRRSA, and  
728 interest, where appropriate, except in instances where a minimum Rate is applicable in  
729 accordance with the relevant Project ratesetting policy. Changes of significance in practices  
730 which implement the Contracting Officer's ratesetting policies will not be implemented until the

731 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and  
732 impact of the proposed change.

733 (n) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the  
734 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates  
735 adjusted upward or downward to reflect the changed costs of delivery (if any) incurred by the  
736 Contracting Officer in the delivery of the transferred Project Water to the transferee's point of  
737 delivery in accordance with the then-existing Central Valley Project Ratesetting Policy.

738 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

739 8. Omitted.

740 RECOVERED WATER ACCOUNT

741 9. (a) Notwithstanding any other provisions of this Contract, water delivered to  
742 the Contractor under its Recovered Water Account as provided at Paragraph 16(b) of the  
743 Settlement and affirmed by Section 10004(a)(5) of the SJRRSA shall be at the total cost of  
744 \$10.00 per acre foot. Recovered Water Account water provided to the Contractor shall be  
745 administered at a priority for delivery lower than Class 2 Water and higher than Section 215  
746 Water.

747 (b) The manner in which the Recovered Water Account will be administered  
748 will be developed in accordance with subdivision (k) of Article 7 of this Contract, the SJRRSA,  
749 and Paragraph 16 of the Settlement.

750 SALES, TRANSFERS, AND EXCHANGES OF WATER

751 10. (a) The right to receive Project Water provided for in this Contract may be  
752 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of  
753 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,

754 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project  
755 Water under this Contract may take place without the prior written approval of the Contracting  
756 Officer, except as provided for in subdivisions (b) and (c) of this Article of this Contract. No  
757 such Project Water sales, transfers, or exchanges shall be approved, where approval is required,  
758 absent compliance with appropriate environmental documentation including but not limited to  
759 the National Environmental Policy Act and the Endangered Species Act. Such environmental  
760 documentation must include, as appropriate, an analysis of groundwater impacts and economic  
761 and social effects, including environmental justice, of the proposed Project Water sales, transfers  
762 and exchanges on both the transferor/exchanger and transferee/exchange recipient.

763           (b) In order to facilitate efficient water management by means of Project  
764 Water sales, transfers, or exchanges of the type historically carried out among Project  
765 Contractors located within the same geographical area and to allow the Contractor to participate  
766 in an accelerated water transfer program, the Contracting Officer has prepared, as appropriate,  
767 necessary environmental documentation including, but not limited to, the National  
768 Environmental Policy Act and the Endangered Species Act analyzing annual Project Water sales,  
769 transfers, or exchanges among Contractors within the same geographical area and the  
770 Contracting Officer has determined that such Project Water sales, transfers, and exchanges  
771 comply with applicable law.

772           (c) Project Water sales, transfers, and exchanges analyzed in the  
773 environmental documentation referenced in subdivision (b) of this Article of this Contract, shall  
774 be conducted with advance notice to the Contracting Officer and the Contracting Officer's  
775 written acknowledgement of the transaction, but shall not require prior written approval by the  
776 Contracting Officer.

777                   (d)     For Project Water sales, transfers, or exchanges to qualify under  
778 subdivision (b) of this Article of this Contract such Project Water sale, transfer, or exchange  
779 must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for  
780 M&I use, groundwater recharge, groundwater banking, similar groundwater activities, surface  
781 water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to  
782 established cropland, wildlife refuges, groundwater basins or M&I use; (ii) occur within a single  
783 Year; (iii) occur between a willing seller and a willing buyer or willing exchangers; (iv) convey  
784 water through existing facilities with no new construction or modifications to facilities and be  
785 between existing Project Contractors and/or the Contractor and the United States, Department of  
786 the Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and  
787 requirements imposed for protection of the environment and Indian Trust Assets, as defined  
788 under Federal law.

789                   (e)     The environmental documentation and the Contracting Officer's  
790 compliance determination for transactions described in subdivision (b) of this Article of this  
791 Contract shall be reviewed every five (5) years and updated, as necessary, prior to the expiration  
792 of the then-existing five (5) year period. All subsequent environmental documentation shall  
793 include an alternative to evaluate not less than the quantity of Project Water historically sold,  
794 transferred, or exchanged within the same geographical area.

795                   (f)     Consistent with Section 10010(e)(1) of the SJRRSA, any agreement  
796 providing for sale, transfer, or exchange of Project Water that is not used for interim flows or  
797 restoration flows pursuant to Paragraphs 13 and 15 of the Settlement, shall be deemed to satisfy  
798 the requirements of CVPIA section 3405(a)(1)(A) and (I); Provided, That such sales, transfers, or  
799 exchanges comply with sub-division (f)(1) and (f)(2) below.

800 (1) Project Water sales, transfers, and exchanges conducted under the  
801 provisions of subdivision (f) of this Article of this Contract shall not require the Contracting  
802 Officer's concurrence as to compliance with CVPIA 3405(a)(1)(A) and (I); Provided, That the  
803 Contractor shall, for Project Water sales, transfers, or exchanges, with a term greater than one (1)  
804 year, provide ninety (90) days written advance notification to the Contracting Officer and  
805 similarly thirty (30) days written advance notification of any Project Water sale, transfer, or  
806 exchange with a term of less than one (1) year. The Contracting Officer shall promptly make  
807 such notice publicly available.

808 (2) The Contractor's thirty (30) days or ninety (90) days advance  
809 written notification pursuant to subdivision (f)(1) of this Article of this Contract shall explain  
810 how the proposed Project Water sales, transfers, or exchanges are intended to reduce, avoid, or  
811 mitigate impacts to Project Water deliveries caused by interim or restoration flows or is  
812 otherwise intended to facilitate the Water Management Goal as described in the SJRRSA. The  
813 Contracting Officer shall promptly make such notice publicly available.

814 (3) In addition, the Contracting Officer shall, at least annually, make  
815 available publicly a compilation of the number of Project Water sales, transfers, and exchange  
816 agreements implemented in accordance with sub-divisions (f)(1) and (f)(2) of this Article of this  
817 Contract.

818 (4) Project Water sold, transferred, or exchanged under an agreement  
819 that meets the terms of subdivisions (f)(1) and (f)(2) of this Article of this Contract shall not be  
820 counted as a replacement or an offset for purposes of determining reductions to Project Water  
821 deliveries to any Friant Division Project Contractor except as provided in Paragraph 16(b) of the  
822 Settlement.

823 (g) Notwithstanding any Additional Capital Obligation that may later be  
824 established, in the case of a sale or transfer of Irrigation Water to another contractor which is  
825 otherwise subject to the acreage limitations, reporting, and Full Cost pricing provisions of the  
826 RRA, such sold or transferred Irrigation Water shall not be subject to such RRA provisions,  
827 however, in the case of a sale or transfer of Irrigation Water to the Contractor from another  
828 contractor which is subject to RRA provisions, such RRA provisions shall apply to delivery of  
829 such water.

830 APPLICATION OF PAYMENTS AND ADJUSTMENTS

831 11. (a) The amount of any overpayment by the Contractor of the Contractor's  
832 O&M, Capital, and deficit (if any) obligations for the Year shall be applied first to any current  
833 liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of  
834 more than One Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu  
835 of a refund, any amount of such overpayment, at the option of the Contractor, may be credited  
836 against amounts to become due to the United States by the Contractor. With respect to  
837 overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or  
838 anyone having or claiming to have the right to the use of any of the Project Water supply  
839 provided for herein. All credits and refunds of overpayments shall be made within thirty (30)  
840 days of the Contracting Officer obtaining direction as to how to credit or refund such  
841 overpayment in response to the notice to the Contractor that it has finalized the accounts for the  
842 Year in which the overpayment was made.

843 (b) All advances for miscellaneous costs incurred for work requested by the  
844 Contractor pursuant to Article 26 of this Contract shall be adjusted to reflect the actual costs  
845 when the work has been completed. If the advances exceed the actual costs incurred, the

846 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's  
847 advances, the Contractor will be billed for the additional costs pursuant to Article 26 of this  
848 Contract.

849 TEMPORARY REDUCTIONS—RETURN FLOWS

850 12. (a) The Contracting Officer shall make all reasonable efforts to optimize  
851 delivery of the Contract Total subject to: (i) the authorized purposes and priorities of the Project;  
852 (ii) the requirements of Federal law and the Settlement; and (iii) the obligations of the United  
853 States under existing contracts, or renewals thereof, providing for water deliveries from the  
854 Project.

855 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily  
856 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for  
857 the purposes of investigation, inspection, maintenance, repair, or replacement of any of the  
858 Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor,  
859 but so far as feasible the Contracting Officer or Operating Non-Federal Entity will give the  
860 Contractor due notice in advance of such temporary discontinuance or reduction, except in case  
861 of emergency, in which case no notice need be given; Provided, That the United States shall use  
862 its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of  
863 service after such reduction or discontinuance, and if requested by the Contractor, the United  
864 States will, if possible, deliver the quantity of Project Water which would have been delivered  
865 hereunder in the absence of such discontinuance or reduction.

866 (c) The United States reserves the right to all seepage and return flow water  
867 derived from Water Delivered to the Contractor hereunder which escapes or is discharged  
868 beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for

869 the United States any right as seepage or return flow to water being used pursuant to this  
870 Contract for surface irrigation or underground storage either being put to reasonable and  
871 beneficial use pursuant to this Contract within the Contractor's Service Area by the Contractor or  
872 those claiming by, through, or under the Contractor. For purposes of this subdivision,  
873 groundwater recharge, groundwater banking and all similar groundwater activities will be  
874 deemed to be underground storage.

875 CONSTRAINTS ON THE AVAILABILITY OF WATER

876 13. (a) In its operation of the Project, the Contracting Officer will use all  
877 reasonable means to guard against a Condition of Shortage in the quantity of water to be made  
878 available to the Contractor pursuant to this Contract. In the event the Contracting Officer  
879 determines that a Condition of Shortage appears probable, the Contracting Officer will notify the  
880 Contractor of said determination as soon as practicable.

881 (b) If there is a Condition of Shortage because of errors in physical operations  
882 of the Project, drought, other physical causes beyond the control of the Contracting Officer or  
883 actions taken by the Contracting Officer to meet legal obligations, including but not limited to  
884 obligations pursuant to the Settlement then, except as provided in Article 19 of this Contract, no  
885 liability shall accrue against the United States or any of its officers, agents, or employees for any  
886 damage, direct or indirect, arising therefrom.

887 (c) The United States shall not execute contracts which together with this  
888 Contract, shall in the aggregate provide for furnishing Class 1 Water in excess of 800,000  
889 acre-feet per Year or Class 2 Water in excess of 1,401,475 acre-feet per Year; Provided, That,  
890 subject to subdivision (l) of Article 3 of this Contract, the limitation placed on Class 2 Water  
891 contracts shall not prohibit the United States from entering into temporary contracts of one year

892 or less in duration for delivery of Project Water to other entities if such water is not necessary to  
893 meet the schedules as may be submitted by all Friant Division Project Contractors entitled to  
894 receive Class 1 Water and/or Class 2 Water under their contracts. Nothing in this subdivision  
895 shall limit the Contracting Officer's ability to take actions that result in the availability of new  
896 water supplies to be used for Project purposes and allocating such new supplies; Provided, That  
897 the Contracting Officer shall not take such actions until after consultation with the Friant  
898 Division Project Contractors.

899 (d) The Contracting Officer shall not deliver any Class 2 Water pursuant to  
900 this or any other contract heretofore or hereafter entered into any Year unless and until the  
901 Contracting Officer determines that the cumulative total quantity of Class 1 Water specified in  
902 subdivision (c) of this Article of this Contract will be available for delivery in said Year. If the  
903 Contracting Officer determines there is or will be a shortage in any Year in the quantity of  
904 Class 1 Water available for delivery, the Contracting Officer shall apportion the available Class 1  
905 Water among all Contractors entitled to receive such water that will be made available at Friant  
906 Dam in accordance with the following:

907 (1) A determination shall be made of the total quantity of Class 1  
908 Water at Friant Dam which is available for meeting Class 1 Water contractual commitments, the  
909 amount so determined being herein referred to as the available supply.

910 (2) The total available Class 1 supply shall be divided by the Class 1  
911 Water contractual commitments, the quotient thus obtained being herein referred to as the  
912 Class 1 apportionment coefficient.

913 (3) The total quantity of Class 1 Water under Article 3 of this Contract  
914 shall be multiplied by the Class 1 apportionment coefficient and the result shall be the quantity of

915 Class 1 Water required to be delivered by the Contracting Officer to the Contractor for the  
916 respective Year, but in no event shall such amount exceed the total quantity of Class 1 Water  
917 specified in subdivision (a) of Article 3 of this Contract.

918 (e) If the Contracting Officer determines there is less than the quantity of  
919 Class 2 Water which the Contractor otherwise would be entitled to receive pursuant to Article 3  
920 of this Contract, the quantity of Class 2 Water which shall be furnished to the Contractor by the  
921 Contracting Officer will be determined in the manner set forth in paragraphs (1), (2), and (3), of  
922 subdivision (d) of this Article of this Contract substituting the term "Class 2" for the term "Class  
923 1."

924 (f) In the event that in any Year there is made available to the Contractor, by  
925 reason of any shortage or apportionment as provided in subdivisions (a), (d), or (e) of this Article  
926 of this Contract, or any discontinuance or reduction of service as set forth in subdivision (b) of  
927 Article 12 of this Contract, less than the quantity of water which the Contractor otherwise would  
928 be entitled to receive hereunder, there shall be made an adjustment on account of the amounts  
929 already paid to the Contracting Officer by the Contractor for Class 1 Water and Class 2 Water  
930 for said Year in accordance with Article 11 of this Contract.

931 UNAVOIDABLE GROUNDWATER PERCOLATION

932 14. Omitted.

933 ACREAGE LIMITATION

934 15. Omitted.

935 RULES, REGULATIONS, AND DETERMINATIONS

936 16. (a) The parties agree that the delivery of water or the use of Federal facilities  
937 pursuant to this Contract is subject to Federal Reclamation law, as amended and supplemented,  
938 and the rules and regulations promulgated by the Secretary of the Interior under Federal  
939 Reclamation law.

940 (b) The Contracting Officer shall have the right to make determinations  
941 necessary to administer this contract that are consistent with its provisions, the laws of the United  
942 States and the State of California, and the rules and regulations promulgated by the Secretary of  
943 the Interior. Such determinations shall be made in consultation with the Contractor.

944 (c) The terms of this Contract are subject to the Settlement and the SJRRSA.  
945 Nothing in this Contract shall be interpreted to limit or interfere with the full implementation of  
946 the Settlement and the SJRRSA.

947 PROTECTION OF WATER AND AIR QUALITY

948 17. (a) Project facilities used to make available and deliver water to the  
949 Contractor shall be operated and maintained in the most practical manner to maintain the quality  
950 of the water at the highest level possible as determined by the Contracting Officer: *Provided,*  
951 *That* the United States does not warrant the quality of the water delivered to the Contractor and is  
952 under no obligation to furnish or construct water treatment facilities to maintain or improve the  
953 quality of water delivered to the Contractor.

954 (b) The Contractor shall comply with all applicable water and air pollution  
955 laws and regulations of the United States and the State of California; and shall obtain all required  
956 permits or licenses from the appropriate Federal, State, or local authorities necessary for the  
957 delivery of water by the Contractor; and shall be responsible for compliance with all Federal,  
958 State, and local water quality standards applicable to surface and subsurface drainage and/or  
959 discharges generated through the use of Federal or Contractor facilities or project water provided  
960 by the Contractor within the Contractor's Project Water Service Area.

961 (c) This article shall not affect or alter any legal obligations of the Secretary  
962 to provide drainage or other discharge services.

963 WATER ACQUIRED BY THE CONTRACTOR  
964 OTHER THAN FROM THE UNITED STATES

965 18. (a) Omitted.

966 (b) Notwithstanding any Additional Capital Obligation that may later be  
967 established, water or water rights now owned or hereafter acquired by the Contractor other than  
968 from the United States pursuant to this Contract and Irrigation Water furnished pursuant to the  
969 terms of this Contract may be simultaneously transported through the same distribution facilities  
970 of the Contractor without the payment of fees to the United States and without application of

971 Federal Reclamation law to Water Delivered pursuant to this Contract or to lands which receive  
972 Water Delivered to Contractor pursuant to this Contract.

973 (c) Water or water rights now owned or hereafter acquired by the Contractor,  
974 other than from the United States or adverse to the Project or its contractors (i.e., non-project  
975 water), may be stored, conveyed and/or diverted through Project facilities, other than Friant  
976 Division Facilities, subject to the completion of appropriate environmental documentation, with  
977 the approval of the Contracting Officer and the execution of any contract determined by the  
978 Contracting Officer to be necessary, consistent with the following provisions:

979 (1) The Contractor may introduce non-project water into Project  
980 facilities and deliver said water to lands within the Contractor's Service Area subject to payment  
981 to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate  
982 as determined by the Contracting Officer. In addition, if electrical power is required to pump  
983 non-project water, the Contractor shall be responsible for obtaining the necessary power and  
984 paying the necessary charges therefor.

985 (2) Delivery of such non-project water in and through Project facilities  
986 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project  
987 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water  
988 available to other Project Contractors; (iii) interfere with the delivery of contractual water  
989 entitlements to any other Project Contractors; (iv) interfere with the physical maintenance of the  
990 Project facilities; or (v) result in the United States incurring any liability or unreimbursed costs  
991 or expenses thereby.

992 (3) Neither the United States nor the Operating Non-Federal Entity  
993 shall be responsible for control, care or distribution of the non-project water before it is

994 introduced into or after it is delivered from the Project facilities. The Contractor hereby releases  
995 and agrees to defend and indemnify the United States and the Operating Non-Federal Entity, and  
996 their respective officers, agents, and employees, from any claim for damage to persons or  
997 property, direct or indirect, resulting from Contractor's diversion or extraction of non-project  
998 water from any source.

999 (4) Diversion of such non-project water into Project facilities shall be  
1000 consistent with all applicable laws, and if involving groundwater, consistent with any  
1001 groundwater management plan for the area from which it was extracted.

1002 (5) After Project purposes are met, as determined by the Contracting  
1003 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity  
1004 of the facilities declared to be available by the Contracting Officer for conveyance and  
1005 transportation of non-project water prior to any such remaining capacity being made available to  
1006 non-project contractors.

1007 (d) Non-project water may be stored, conveyed and/or diverted through Friant  
1008 Division Facilities, subject to the prior completion of appropriate environmental documentation  
1009 and approval of the Contracting Officer without execution of a separate contract, consistent with  
1010 subdivisions (c)(1) through (c)(5) of this Article and any other condition determined to be  
1011 appropriate by the Contracting Officer.

1012 OPINIONS AND DETERMINATIONS

1013 19. Where the terms of this Contract provide for actions to be based upon the opinion  
1014 or determination of either party to this Contract, said terms shall not be construed as permitting  
1015 such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
1016 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly

1017 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,  
1018 or unreasonable opinion or determination. Each opinion or determination by either party shall be  
1019 provided in a timely manner. Nothing in this Article of this Contract is intended to or shall affect  
1020 or alter the standard of judicial review applicable under Federal law to any opinion or  
1021 determination implementing a specific provision of Federal law embodied in statute or  
1022 regulation.

1023 COORDINATION AND COOPERATION

1024 20. (a) In order to further their mutual goals and objectives, the Contracting  
1025 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and  
1026 with other affected Project Contractors, in order to improve the operation and management of the  
1027 Project. The communication, coordination, and cooperation regarding operations and  
1028 management shall include, but not limited to, any action which will or may materially affect the  
1029 quantity or quality of Project Water supply, the allocation of Project Water supply, and Project  
1030 financial matters including, but not limited to, budget issues. The communication, coordination,  
1031 and cooperation provided for hereunder shall extend to all provisions of this Contract. Each  
1032 party shall retain exclusive decision making authority for all actions, opinions, and  
1033 determinations to be made by the respective party.

1034 (b) It is the intent of the Secretary to improve water supply reliability. To  
1035 carry out this intent:

1036 (1) The Contracting Officer will, at the request of the Contractor,  
1037 assist in the development of integrated resource management plans for the Contractor. Further,  
1038 the Contracting Officer will, as appropriate, seek authorizations for implementation of  
1039 partnerships to improve water supply, water quality, and reliability.

1040 (2) The Secretary will, as appropriate, pursue program and project  
1041 implementation and authorization in coordination with Project Contractors to improve the water  
1042 supply, water quality, and reliability of the Project for all Project purposes.

1043 (3) The Secretary will coordinate with Project Contractors and the  
1044 State of California to seek improved water resource management.

1045 (4) The Secretary will coordinate actions of agencies within the  
1046 Department of the Interior that may impact the availability of water for Project purposes.

1047 (5) The Contracting Officer shall periodically, but not less than  
1048 annually, hold division level meetings to discuss Project operations, division level water  
1049 management activities, and other issues as appropriate.

1050 (c) Without limiting the contractual obligations of the Contracting Officer  
1051 hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting  
1052 Officer's ability to communicate, coordinate, and cooperate with the Contractor or other  
1053 interested stakeholders or to make decisions in a timely fashion as needed to protect health,  
1054 safety, physical integrity of structures or facilities, or the Contracting Officer's ability to comply  
1055 with applicable laws.

1056 CHARGES FOR DELINQUENT PAYMENTS

1057 21. (a) The Contractor shall be subject to interest, administrative and penalty  
1058 charges on delinquent installments or payments. When a payment is not received by the due  
1059 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond  
1060 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an  
1061 administrative charge to cover additional costs of billing and processing the delinquent payment.  
1062 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional  
1063 penalty charge of six (6) percent per year for each day the payment is delinquent beyond the due  
1064 date. Further, the Contractor shall pay any fees incurred for debt collection services associated  
1065 with a delinquent payment.

1066 (b) The interest charge rate shall be the greater of the rate prescribed quarterly  
1067 in the Federal Register by the Department of the Treasury for application to overdue payments,

1068 or the interest rate of one-half of one (0.5) percent per month prescribed by Section 6 of the  
1069 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be  
1070 determined as of the due date and remain fixed for the duration of the delinquent period.

1071 (c) When a partial payment on a delinquent account is received, the amount  
1072 received shall be applied, first to the penalty, second to the administrative charges, third to the  
1073 accrued interest, and finally to the overdue payment.

1074 EQUAL EMPLOYMENT OPPORTUNITY

1075 22. During the performance of this Contract, the Contractor agrees as follows:

1076 (a) The Contractor will not discriminate against any employee or applicant for  
1077 employment because of race, color, religion, sex, disability, or national origin. The Contractor  
1078 will take affirmative action to ensure that applicants are employed, and that employees are  
1079 treated during employment, without regard to their race, color, religion, sex, disability, or  
1080 national origin. Such action shall include, but not be limited to the following: employment,  
1081 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination;  
1082 rates of pay or other forms of compensation; and selection for training, including apprenticeship.  
1083 The Contractor agrees to post in conspicuous places, available to employees and applicants for  
1084 employment, notices to be provided by the Contracting Officer setting forth the provisions of this  
1085 nondiscrimination clause.

1086 (b) The Contractor will, in all solicitations or advertisements for employees  
1087 placed by or on behalf of the Contractor, state that all qualified applicants will receive  
1088 consideration for employment without regard to race, color, religion, sex, disability, or national  
1089 origin.

1090 (c) The Contractor will send to each labor union or representative of workers  
1091 with which it has a collective bargaining agreement or other contract or understanding, a notice,  
1092 to be provided by the Contracting Officer, advising the labor union or workers' representative of  
1093 the Contractor's commitments under Section 202 of Executive Order 11246 of September 24,  
1094 1965, and shall post copies of the notice in conspicuous places available to employees and  
1095 applicants for employment.

1096 (d) The Contractor will comply with all provisions of Executive Order No.  
1097 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary  
1098 of Labor.

1099 (e) The Contractor will furnish all information and reports required by  
1100 Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the  
1101 Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and  
1102 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to  
1103 ascertain compliance with such rules, regulations, and orders.

1104 (f) In the event of the Contractor's noncompliance with the nondiscrimination  
1105 clauses of this contract or with any of such rules, regulations, or orders, this contract may be  
1106 canceled, terminated or suspended in whole or in part and the Contractor may be declared  
1107 ineligible for further Government contracts in accordance with procedures authorized in  
1108 Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and  
1109 remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule,  
1110 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1111 (g) The Contractor will include the provisions of paragraphs (1) through (7) in  
1112 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
1113 Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24,  
1114 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor  
1115 will take such action with respect to any subcontract or purchase order as may be directed by the  
1116 Secretary of Labor as a means of enforcing such provisions, including sanctions for  
1117 noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or is  
1118 threatened with, litigation with a subcontractor or vendor as a result of such direction, the  
1119 Contractor may request the United States to enter into such litigation to protect the interests of  
1120 the United States.

1121 GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

1122 23. (a) The obligation of the Contractor to pay the United States as provided in  
1123 this Contract is a general obligation of the Contractor notwithstanding the manner in which the  
1124 obligation may be distributed among the Contractor's water users and notwithstanding the  
1125 default of individual water users in their obligations to the Contractor.

1126 (b) The payment of charges becoming due hereunder is a condition precedent  
1127 to receiving benefits under this Contract. The United States shall not make water available to the  
1128 Contractor through Project facilities during any period in which the Contractor may be in arrears  
1129 in the advance payment of water rates due the United States. The Contractor shall not furnish  
1130 water made available pursuant to this Contract for lands or parties which are in arrears in the  
1131 advance payment of water rates levied or established by the Contractor.

1132 (c) With respect to subdivision (b) of this Article of this Contract, the  
1133 Contractor shall have no obligation to require advance payment for water rates which it levies.

1134 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1135 24. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
1136 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the  
1137 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights  
1138 laws, as well as with their respective implementing regulations and guidelines imposed by the  
1139 U.S. Department of the Interior and/or Bureau of Reclamation.

1140 (b) These statutes require that no person in the United States shall, on the  
1141 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be  
1142 denied the benefits of, or be otherwise subjected to discrimination under any program or activity  
1143 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the  
1144 Contractor agrees to immediately take any measures necessary to implement this obligation,  
1145 including permitting officials of the United States to inspect premises, programs, and documents.

1146 (c) The Contractor makes this agreement in consideration of and for the  
1147 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other  
1148 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of  
1149 Reclamation, including installment payments after such date on account of arrangements for  
1150 Federal financial assistance which were approved before such date. The Contractor recognizes  
1151 and agrees that such Federal assistance will be extended in reliance on the representations and  
1152 agreements made in this Article, and that the United States reserves the right to seek judicial  
1153 enforcement thereof.

1154 PRIVACY ACT COMPLIANCE

1155 25. Omitted.

1156 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1157 26. In addition to all other payments to be made by the Contractor pursuant to this  
1158 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a  
1159 bill and detailed statement submitted by the Contracting Officer to the Contractor for such  
1160 specific items of direct cost incurred by the United States for work requested by the Contractor  
1161 associated with this Contract plus indirect costs in accordance with applicable Bureau of  
1162 Reclamation policies and procedures. All such amounts referred to in this Article of this  
1163 Contract shall not exceed the amount agreed to in writing in advance by the Contractor. This  
1164 Article of this Contract shall not apply to costs for routine contract administration.

1165 WATER CONSERVATION

1166 27. (a) Prior to the delivery of water provided from or conveyed through  
1167 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor  
1168 shall be implementing an effective water conservation and efficiency program based on the

1169 Contractor's water conservation plan that has been determined by the Contracting Officer to  
1170 meet the conservation and efficiency criteria for evaluating water conservation plans established  
1171 under Federal law. The water conservation and efficiency program shall contain definite water  
1172 conservation objectives, appropriate economically feasible water conservation measures, and  
1173 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this  
1174 Contract shall be contingent upon the Contractor's continued implementation of such water  
1175 conservation program. In the event the Contractor's water conservation plan or any revised  
1176 water conservation plan completed pursuant to subdivision (d) of this Article of this Contract  
1177 have not yet been determined by the Contracting Officer to meet such criteria, due to  
1178 circumstances which the Contracting Officer determines are beyond the control of the  
1179 Contractor, water deliveries shall be made under this Contract so long as the Contractor  
1180 diligently works with the Contracting Officer to obtain such determination at the earliest  
1181 practicable date, and thereafter the Contractor immediately begins implementing its water  
1182 conservation and efficiency program in accordance with the time schedules therein.

1183           (b)     Should the amount of M&I Water Delivered pursuant to subdivision (a) of  
1184 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the  
1185 Contractor shall implement the Best Management Practices identified by the time frames issued  
1186 by the California Urban Water Conservation Council for such M&I Water unless any such  
1187 practice is determined by the Contracting Officer to be inappropriate for the Contractor.

1188           (c)     The Contractor shall submit to the Contracting Officer a report on the  
1189 status of its implementation of the water conservation plan on the reporting dates specified in the  
1190 then-existing conservation and efficiency criteria established under Federal law.

1191 (d) At five (5) -year intervals, the Contractor shall revise its water  
1192 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating  
1193 water conservation plans established under Federal law and submit such revised water  
1194 management plan to the Contracting Officer for review and evaluation. The Contracting Officer  
1195 will then determine if the water conservation plan meets Reclamation's then-existing  
1196 conservation and efficiency criteria for evaluating water conservation plans established under  
1197 Federal law.

1198 (e) If the Contractor is engaged in direct groundwater recharge, such activity  
1199 shall be described in the Contractor's water conservation plan.

1200 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1201 28. Except as specifically provided in Article 18 of this Contract, the provisions of  
1202 this Contract shall not be applicable to or affect non-project water or water rights now owned or  
1203 hereafter acquired by the Contractor or any user of such water within the Contractor's Service  
1204 Area. Any such water shall not be considered Project Water under this Contract. In addition,  
1205 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or  
1206 any water user within the Contractor's Service Area acquires or has available under any other  
1207 contract pursuant to Federal Reclamation law.

1208 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1209 29. (a) The O&M of a portion of the Project facilities which serve the Contractor,  
1210 and responsibility for funding a portion of the costs of such O&M, have been transferred to the  
1211 Operating Non-Federal Entity by separate agreement between the United States and the  
1212 Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the  
1213 rights or obligations of the Contractor or the United States hereunder.

1214                   (b)     The Contracting Officer has previously notified the Contractor in writing  
1215     that the O&M of a portion of the Project facilities which serve the Contractor has been  
1216     transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly  
1217     to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer  
1218     under the terms and conditions of the separate agreement between the United States and the  
1219     Operating Non-Federal Entity described in subdivision (a) of this Article of this Contract, all  
1220     rates, charges or assessments of any kind, including any assessment for reserve funds, which the  
1221     Operating Non-Federal Entity or such successor determines, sets or establishes for (i) the O&M  
1222     of the portion of the Project facilities operated and maintained by the Operating Non-Federal  
1223     Entity or such successor, or (ii) the Friant Division's share of the operation, maintenance and  
1224     replacement costs for physical works and appurtenances associated with the Tracy Pumping  
1225     Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal share of the  
1226     O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use conveyance  
1227     and conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity  
1228     or such successor shall not relieve the Contractor of its obligation to pay directly to the United  
1229     States the Contractor's share of the Project Rates and Charges, except to the extent the Operating  
1230     Non-Federal Entity collects payments on behalf of the United States in accordance with the  
1231     separate agreement identified in subdivision (a) of this Article of this Contract.

1232                   (c)     For so long as the O&M of any portion of the Project facilities serving the  
1233     Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the  
1234     Contracting Officer shall adjust those components of the Rates for Water Delivered under this  
1235     Contract representing the cost associated with the activity being performed by the Operating  
1236     Non-Federal Entity or its successor.

1237 (d) In the event the O&M of the Project facilities operated and maintained by  
1238 the Operating Non-Federal Entity is re-assumed by the United States during the term of this  
1239 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the  
1240 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the  
1241 Contractor for Project Water under this Contract representing the O&M costs of the portion of  
1242 such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the  
1243 absence of written notification from the Contracting Officer to the contrary, pay the Rates and  
1244 Charges specified in the revised Exhibit "B" directly to the United States in compliance with  
1245 Article 7 of this Contract.

1246 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1247 30. The expenditure or advance of any money or the performance of any obligation of  
1248 the United States under this Contract shall be contingent upon appropriation or allotment of  
1249 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
1250 obligations under this Contract. No liability shall accrue to the United States in case funds are  
1251 not appropriated or allotted.

1252 BOOKS, RECORDS, AND REPORTS

1253 31. (a) The Contractor shall establish and maintain accounts and other books and  
1254 records pertaining to administration of the terms and conditions of this Contract, including: the  
1255 Contractor's financial transactions, water supply data, and Project land and right-of-way  
1256 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use  
1257 data; and other matters that the Contracting Officer may require. Reports thereon shall be  
1258 furnished to the Contracting Officer in such form and on such date or dates as the Contracting  
1259 Officer may require. Subject to applicable Federal laws and regulations, each party to this  
1260 Contract shall have the right during office hours to examine and make copies of the other party's  
1261 books and records relating to matters covered by this Contract.

1262 (b) Notwithstanding the provisions of subdivision (a) of this Article of this  
1263 Contract, no books, records, or other information shall be requested from the Contractor by the  
1264 Contracting Officer unless such books, records, or information are reasonably related to the

1265 administration or performance of this Contract. Any such request shall allow the Contractor a  
1266 reasonable period of time within which to provide the requested books, records, or information.

1267 (c) At such time as the Contractor provides information to the Contracting  
1268 Officer pursuant to subdivision (a) of this Article of this Contract, a copy of such information  
1269 shall be provided to the Operating Non-Federal Entity.

1270 ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

1271 32. (a) The provisions of this Contract shall apply to and bind the successors and  
1272 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1273 therein shall be valid until approved in writing by the Contracting Officer.

1274 (b) The assignment of any right or interest in this Contract by either party  
1275 shall not interfere with the rights or obligations of the other party to this Contract absent the  
1276 written concurrence of said other party.

1277 (c) The Contracting Officer shall not unreasonably condition or withhold  
1278 approval of any proposed assignment.

1279 SEVERABILITY

1280 33. In the event that a person or entity who is neither (i) a party to a Project contract,  
1281 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor  
1282 (iii) an association or other form of organization whose primary function is to represent parties to  
1283 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1284 enforceability of a provision included in this Contract and said person, entity, association, or  
1285 organization obtains a final court decision holding that such provision is legally invalid or  
1286 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),  
1287 the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of  
1288 such final court decision identify by mutual agreement the provisions in this Contract which

1289 must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate  
1290 revision(s). The time periods specified above may be extended by mutual agreement of the  
1291 parties. Pending the completion of the actions designated above, to the extent it can do so  
1292 without violating any applicable provisions of law, the United States shall continue to make the  
1293 quantities of Project Water specified in this Contract available to the Contractor pursuant to the  
1294 provisions of this Contract which were not found to be legally invalid or unenforceable in the  
1295 final court decision.

1296 RESOLUTION OF DISPUTES

1297 34. Should any dispute arise concerning any provisions of this Contract, or the  
1298 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to  
1299 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting  
1300 Officer referring any matter to Department of Justice, the party shall provide to the other party  
1301 thirty (30) days written notice of the intent to take such action; Provided, That such notice shall  
1302 not be required where a delay in commencing an action would prejudice the interests of the party  
1303 that intends to file suit. During the thirty (30) day notice period, the Contractor and the  
1304 Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as  
1305 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the  
1306 Contractor or the United States may have.

1307 OFFICIALS NOT TO BENEFIT

1308 35. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1309 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1310 manner as other water users or landowners.

1311 CHANGES IN CONTRACTOR'S SERVICE AREA

1312 36. (a) While this Contract is in effect, no change may be made in the  
1313 Contractor's Service Area or boundaries, by inclusion or exclusion of lands, dissolution,  
1314 consolidation, merger, or otherwise, except upon the Contracting Officer's written consent.

1315 (b) Within thirty (30) days of receipt of a request for such a change, the  
1316 Contracting Officer will notify the Contractor of any additional information required by the  
1317 Contracting Officer for processing said request, and both parties will meet to establish a mutually  
1318 agreeable schedule for timely completion of the process. Such process will analyze whether the  
1319 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this  
1320 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this  
1321 Contract or to pay for any Federally-constructed facilities for which the Contractor is  
1322 responsible; and (iii) have an impact on any Project Water rights applications, permits, or  
1323 licenses. In addition, the Contracting Officer shall comply with the National Environmental  
1324 Policy Act and the Endangered Species Act. The Contractor will be responsible for all costs  
1325 incurred by the Contracting Officer in this process, and such costs will be paid in accordance  
1326 with Article 26 of this Contract.

1327 FEDERAL LAWS

1328 37. By entering into this Contract, the Contractor does not waive its rights to contest  
1329 the validity or application in connection with the performance of the terms and conditions of this  
1330 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with  
1331 the terms and conditions of this Contract unless and until relief from application of such Federal  
1332 law or regulation to the implementing provision of the Contract is granted by a court of  
1333 competent jurisdiction.

1334 EMERGENCY RESERVE FUND

1335 38. The Contractor and Contracting Officer acknowledge that the requirements to  
1336 establish and maintain a minimum reserve fund account to finance extraordinary O&M costs of  
1337 Friant Division Facilities is and will continue to be administered under Contract No.  
1338 8-07-20-X0356 titled Agreement To Transfer The Operation, Maintenance And Replacement  
1339 And Certain Financial And Administrative Activities Related To The Friant-Kern Canal And  
1340 Associated Works, dated March 1, 1998 as amended, supplemented, assigned, or renewed.

1341 MEDIUM FOR TRANSMITTING PAYMENT

1342 39. (a) All payments from the Contractor to the United States under this contract  
1343 shall be by the medium requested by the United States on or before the date payment is due. The  
1344 required method of payment may include checks, wire transfers, or other types of payment  
1345 specified by the United States.

1346 (b) Upon execution of the contract, the Contractor shall furnish the  
1347 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose  
1348 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising  
1349 out of the Contractor's relationship with the United States.

1350 NOTICES

1351 40. Any notice, demand, or request authorized or required by this Contract shall be  
1352 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
1353 delivered to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno,  
1354 California 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered  
1355 to the City of Fresno, Public Utilities Director, 2600 Fresno Street, Room 3065, Fresno,  
1356 California 93721-3624. The designation of the addressee or the address may be changed by  
1357 notice given in the same manner as provided in this Article of this Contract for other notices.

1358 CONFIRMATION OF CONTRACT

1359 41. The Contractor, after the execution of this Contract, shall promptly provide to the  
1360 Contracting Officer a decree of a court of competent jurisdiction of the State of California,  
1361 confirming the execution of this Contract. The Contractor shall furnish the United States a  
1362 certified copy of the final decree, the validation proceedings, and all pertinent supporting records  
1363 of the court approving and confirming this Contract, and decreeing and adjudging it to be lawful,  
1364 valid, and binding on the Contractor.

1365

CONTRACT DRAFTING CONSIDERATIONS

1366

42. Articles 1 through 7, Articles 9 through 13, subdivision (c) of Article 16, Articles

1367

18 through 20, subdivision (c) of Article 23, Articles 26 through 29, subdivisions (b) and (c) of

1368

Article 31, subdivisions (b) and (c) of Article 32, Articles 33 through 34, subdivision (b) of

1369

Article 36, and Articles 37 through 38 of this Contract have been drafted, negotiated, and

1370

reviewed by the parties hereto, each of whom is sophisticated in the matters to which this

1371

Contract pertains, and no one party shall be considered to have drafted the stated Articles.

1372            IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day  
1373    and year first above written.

**EXHIBIT F**  
**METERING PLAN**

Completion Date	Item	Comments	Status
03/05*	Contract effective		
01/06	Implementation study	Select and obtain consultant regarding implementation study	City's consultant HDR Engineering completes the Residential Meter Implementation Plan in January of 2008. City of Fresno City Council adopted Negative Declaration and Implementation Plan on June 24, 2008.
01/06	Submit progress report to Bureau		Progress Report (dated February 27, 2006) sent to Ms. Barbara Hidleburg of US Bureau of Reclamation.
12/06	Confirmation of existing meters	Verify integrity and servicing of existing meters	Letter summarizing water meter testing results (dated January 19, 2007) sent to Ms. Barbara Hidleburg of US Bureau of Reclamation.
01/07	Submit progress report to Bureau		Progress Report (dated January 24, 2007) sent to Ms. Barbara Hidleburg of US Bureau of Reclamation.
06/07	Secure installation contract	Begin implementation of consultant recommendations	City executed multiple "small" pilot meter installation contracts. In 2006, the City executed two contracts for a total of 931 SFR installations. In 2007, the City executed one contract for a total of 580 SFR installations.
12/07	Draft rate ordinance	Initial development of tiered rate structure	In mid-2008 initiate rate study to convert from residential flat rate to a revenue neutral volumetric rate. Approximately 24,000 existing commercial, industrial, municipal, and multi-family accounts are billed on a volumetric rate.
01/08	Submit progress report to Bureau		Progress Report (dated January 31, 2008) sent to Ms. Barbara Hidleburg of US Bureau of Reclamation.
01/08	Initiate retrofit	Begin installation of meters on existing dwellings	In 2008, the City continued to execute additional "small" contracts to install 155 meter boxes and spools, and complete add'l service transfers
12/08	Meter installation progress	29% (30,000 of approximately 105,000 units installed)	See above items. As indicated in submitted Progress Reports, large scale installation of new water meters not yet underway.
01/09	Submit progress report to Bureau		Progress Report (dated January 15, 2009) sent to Ms. Barbara Hidleburg of US Bureau of Reclamation. Mr. David Woolley of USBR responded with a "Receipt Letter" dated March 30, 2009.

**EXHIBIT F  
METERING PLAN**

Completion Date	Item	Comments	Status
12/09	Meter installation progress	43% (45,000 units)	As of January 25, 2010, 19,536 new meter boxes (not meters) have been installed. As indicated in submitted Progress Reports, large scale installation of new water meters not yet underway.
01/10	Submit progress report to Bureau		Progress Report (dated January 25, 2010) sent to Ms. Valerie Curley of US Bureau of Reclamation.
03/10	Impose new rate ordinance (fees based on metered use)	New rate structure applicable to currently metered customers. Rates to be effective as new meter installations occur.	On 11/5/09, the Council of the City of Fresno adopted Resolution No. 2009-231 (Ratifying the Proposition 218 Process According to California Constitution Article XIID and Adopting a Residential Metered Water Rate), and Resolution 2009-232 (487th Amendment to MFS Res. 80-420 Adopting Residential Metered Water Rates in the Water Fee Section Under the Department of Public Utilities).
12/10	Meter installation progress	62% (65,000 units)	On June 2010, City issued Notice to Proceed to Vulcan Construction & Maintenance, Inc. for Requirement Contract NO. 1 for Water Meter Installation. Shortly thereafter, City issued Notice to Proceed to Measurement Control Systems for Requirement Contract NO. 2 for Water Meter Installation. Both contracts require installation of 10,500 water meters each between months of July - December 2010, resulting in 21,000 total new meter installs by end of December 2010. Both contracts can be extended two more years and can ultimately include 55,000 meter installations each (111,000 total). As of 9/2/10, approximately 4.5% (5,016) new meters installed through Requirement Contract Nos. 1 & 2.
01/11	Submit progress report to Bureau		
12/11	Adopt new rate ordinance	81% (85,000 units)	
01/12	Submit compliance report to Bureau		
12/12	Meter installation progress	100% (105,000 units)	
01/13	Submit completion report	Retrofit complete	

Schedule subject to change due to unforeseen circumstances.

\*This date will be revised at the time the contract is executed on behalf of the United States.



**Department of Public Utilities**

Administration Division  
2600 Fresno Street, Room 3065  
Fresno, California 93721-3624  
559-621-8600 – FAX 559-498-1304  
[www.fresno.gov](http://www.fresno.gov)



December 21, 2010

Donald R. Glazer  
Regional Director  
Bureau of Reclamation  
Mid-Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825-1898

Re: Contract Between the United States and the City of Fresno (City) Providing for Project Water Service From Friant Division and for Facilities Repayment -- Contract No. 14-06-200-8901D (CVP Contract) – Central Valley Project, California; Resolution Authorizing City to Execute Same

Dear Mr. Glazer,

Enclosed you will find a certified "Minute Resolution" confirming the authorization and approval of City Council of the City of Fresno to enter into the above referenced CVP Contract, and granting authority to the City Manager to execute the CVP Contract on the City's behalf. The Clerk of the City has certified this resolution, and Deputy City Attorney has affirmed the form of the resolution.

The California Constitution grants cities the authority to provide water service to its residents and businesses. (Cal. Const., Art. XI, § 9.) California Government Code section 38730 *et seq.* grants cities the authority to acquire water rights, build and operate water distribution facilities, and enter into contracts necessary to provide water service. In providing water service to approximately 500,000 community residents, the City routinely enters into contracts related to this water service.

With respect to the CVP Contract, on December 2, 2010, at a properly noticed and agendized meeting, the City Council held a public hearing to consider the CVP Contract. As a result of that hearing, the Council authorized the City Manager to execute the CVP Contract. It is standard practice for cities to approve contracts in this manner and delegate signature authority to a specific city representative. (Gov't Code § 40602.) The enclosed Minute Resolution reflects this action. The City Manager is the chief administrative officer of the City. This method of authorizing the City Manager to enter into contracts on the City's behalf is standard practice. Documenting the Council approval through a Minute Resolution is also a standard method of confirming the Council's grant of authority – in this case, to enter into the CVP Contract.

BUREAU OF RECLAMATION  
December 21, 2010  
Page 2

Under separate cover, (Attention: Richard Stevenson) you should have already received three original, signed versions of the CVP Contract. These were sent to your office via overnight mail on December 14, 2010.

Should you have any further questions, please contact me at 559-621-8610 or email [Robert.Andersen@fresno.gov](mailto:Robert.Andersen@fresno.gov).

Sincerely,



Robert N. Andersen, P.E.  
Assistant Director

Enclosure

c: Mark Scott, City Manager  
James Sanchez, City Attorney  
Rebecca Klisch, City Clerk

MINUTE RESOLUTION

(9:15 A.M. "B") APPROVE A PERMANENT REPAYMENT CONTRACT WITH THE U.S. BUREAU OF RECLAMATION (BUREAU) TO REPLACE THE EXISTING CENTRAL VALLEY WATER PROJECT CONTRACT (CVWP) AND PAY OFF THE OUTSTANDING BALANCE OF THE CAPITAL COSTS ASSOCIATED WITH THE CITY'S PRO-RATED SHARE (BASED ON THE CITY'S 60,000 ACRE FEET ALLOCATION) OF THE CVWP INFRASTRUCTURE COSTS

#1 ADOPT CEQA FINDING THAT THE PROJECT IS CATEGORICALLY EXEMPT (EXISTING PROJECTS)

#2 AUTHORIZE THE CITY ATTORNEY TO FILE A VALIDATION ACTION WITH THE FRESNO COUNTY SUPERIOR COURT

#3 AUTHORIZE THE CITY MANAGER OR DESIGNEE TO EXECUTE THE REPAYMENT CONTRACT, CONTINGENT UPON THE BUREAU'S NEPA COMPLIANCE

Councilmember Dages left the meeting at 9:42 a.m. Assistant Public Utilities Director Querin stated the staff report as submitted was complete and staff and special counsel were present to answer any questions. City Attorney Sanchez stated staff performed a preliminary environmental assessment and determined this project fell within the categorical exemption set forth as the project involved an agreement to provide water supplies and services for existing public utilities involving negligible or no expansion of use beyond that currently existing and was a continuation of water services that commenced in the 1960s. Mr. Querin stated this was a conversion of the existing contract over to a permanent repayment contract and it provided for some additional cost savings and set the cost for the existing infrastructure and further explained. President Westerlund presented questions relative to the 40-year contract term, renewal cycle, if calling this a repayment contract precluded early repayment, and negotiations and the settlement agreement, with Special Counsel Rob Sapperstein with the Brownstein Law Firm responding and clarifying issues.

On motion of Acting President Brand, seconded by Councilmember Xiong, duly carried, RESOLVED, the subject permanent Repayment Contract with the U.S. Bureau of Reclamation (Bureau) hereby approved, the CEQA finding hereby adopted, the City Attorney authorized to file a validation action with the Fresno County Superior Court, and the City Manager or designee authorized to sign the permanent Repayment Contract on behalf of the City if no material changes are made as a result of the public comments and contingent upon successful completion of the Bureau's NEPA compliance, by the following vote:

Ayes : Borgeas, Brand, Olivier, Sterling, Xiong, Westerlund  
Noes : None  
Absent: Dages

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CLERK'S CERTIFICATION

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, County of Fresno, State of California, do hereby certify the foregoing to be a full, true and correct extract from the Fresno City Council Minutes from the meeting of December 2, 2010, relating to a permanent repayment contract with the U.S. Bureau of Reclamation as approved by the Council of the City of Fresno on December 9, 2010, now on file in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Fresno, California, this 21st day of December, 2010.

APPROVED AND FORWARDED  
CITY ATTORNEY'S OFFICE  
BY:   
CHIEF ASSISTANT

REBECCA E. KLISCH  
CLERK, CITY OF FRESNO

By:   
Deputy

